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FCC Record

A comprehensive compilation of decisions, reports, public notices and other documents of the Federal Communications Commission of the United States.

FEDERAL COMMUNICATIONS COMMISSION

***James H. Quello, Chairman**

****Sherrie P. Marshall**

Andrew C. Barrett

Ervin S. Duggan

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*Commissioner Quello designated as Chairman effective February 5, 1993.
**Commissioner Marshall resigned effective April 30, 1993.

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-62

In re Applications of

CRYSTAL CLEAR COMMUNICATIONS, INC. File No. BPH-901214MA

THE RADIO MINISTRIES BOARD OF VICTORY CHRISTIAN CENTER ASSEMBLY OF GOD, INC. File No. BPH-901217MJ

For Construction Permit for
New FM Station, Channel 240A,
Seelyville, Indiana

MEMORANDUM OPINION AND ORDER

Adopted: May 7, 1993; Released: May 17, 1993

By the Commission:

1. We have considered an application filed by Crystal Clear Communications, Inc. on November 6, 1992 for review of the Review Board's memorandum opinion and order, 7 FCC Rcd 6462 (1992), affirming the ALJ's dismissal of its application for a construction permit.[1] We hold that the dismissal should be sustained.

2. The Board held that the pertinent facts of this case are essentially identical to the circumstances that it considered in *LRB Broadcasting*, 7 FCC Rcd 6459 (1992), and it therefore relied on its rationale in that decision as grounds for upholding the dismissal of Crystal Clear's application. 7 FCC Rcd 6463 ¶ 7. We agree that there is no material distinction between the facts here and the facts that warranted dismissal of the application of Zenitram Communications, Inc. in *LRB*. Further, several of the arguments that Crystal Clear advances in the instant appeal are identical to arguments that we rejected in our decision denying Zenitram's appeal from the dismissal of its application, *LRB Broadcasting*, FCC 93-209, released May 5, 1993, and need not be discussed again here. The following comments address the remaining arguments.

3. Crystal Clear argues that leniency is in order here, even if it was not in order in the three-applicant *LRB* proceeding, because dismissal of its application from this two-party comparative proceeding would deny the Commission an opportunity to choose between qualified applicants. The distinction between the elimination of one competing applicant from a field of three and the elimination of one from a field of two, however, is not crucial here. The Commission has adopted a rule, 47 C.F.R. §1.221(c), providing without exception that the applications of parties that miss the deadline for filing notices of appearance will be dismissed. In so doing, the Commission indicated that reasons of administrative efficiency outweigh any countervailing advantage of preserving choice that might be served by accepting late-filed notices. The policy against waiving the prescribed penalty for missing the deadline, which we elucidated in *LRB*, would be equally disserved by making exception for two-applicant cases. The fact that Crystal served a notice of appearance just three days after the deadline, which Crystal stresses, is also immaterial in determining the applicability of the no-waiver policy.

4. Crystal Clear also misses the mark in arguing that it deserves lenient treatment because it must be presumed that it acted in good faith, as there is no proof that it was deliberately dilatory and as "the consequences of late-filing are so potentially severe that no one in his right mind would deliberately file late as a tactic to garner an unfair advantage." To hold that failure to meet the deadline for filing notices of appearance is excusable in the absence of proof of bad faith would effectively eviserate the policy that the Commission established in §1.221(c) to eliminate unnecessary delays in adjudicatory cases.

5. The appellant's bald assertion that this case merely involves a single procedural default and is therefore materially different from *LRB* is false. The Board found that Crystal Clear committed three procedural derelictions, and those were of precisely the same kind as the three that Zenitram committed. 7 FCC Rcd at 6462 ¶ 4. Crystal Clear makes no showing that this finding is incorrect.

6. ACCORDINGLY, IT IS ORDERED that the application for review filed by Crystal Clear Communications, Inc. on November 6, 1992 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[1] On December 3, 1992, The Radio Ministries Board of Victory Christian Center Assembly of God, Inc. filed an opposition to Crystal Clear's application for review.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-79

In the Matter of

Amendment of Section 73.202(b),	RM-7641
Table of Allotments,	RM-7648
FM Broadcast Stations.	RM-7820
(Pierce, Bloomington, Markham,	RM-7821
San Pedro and Bishop, Texas)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 16, 1993; Released: May 17, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the *Notice of Proposed Rule Making*, 6 FCC Rcd 1847 (1991), proposing for consideration two interrelated petitions for rule making. The first petition, filed by Fred W. Hannel d/b/a/ Trident Broadcasting of Texas ("Trident"), proposes the allotment of Channel 296A to Pierce, Texas, as the community's first local aural transmission service (RM-7641). The second petition, filed by Tschirhart Broadcasting, Inc. ("Tschirhart"), permittee of Station KLUB(FM) (formerly KVMK(FM)), proposes the substitution of Channel 295C3 for Channel 295A at Bloomington, Texas, and modification of Station KLUB(FM)'s construction permit accordingly (RM-7648).[2] Proponents filed comments in support of their respective proposals reaffirming their intention to apply for the channels, if allotted. Opposing comments to the Trident proposal were filed by Tschirhart and U.S. Radio, L.P. ("U.S. Radio"). Colorado River Broadcasters ("CRB") filed comments and a counterproposal to the Trident proposal (RM-7820). A counterproposal was filed by F. W. Hannel d/b/a Prairie Broadcasting Company ("Prairie") to the Tschirhart proposal (RM-7821).[3] A petition to deny the Tschirhart proposal was filed by Cosmopolitan Enterprises of Victoria, Inc. ("Cosmopolitan"). Reply comments were filed by Trident, Tschirhart, Prairie, Cosmopolitan, U.S. Radio, and Benavides Broadcasting Associates ("BBA").[4] Tschirhart filed a supplement to its reply comments.[5] A statement in response to Tschirhart's reply comments and a motion to strike were late-filed by Independence Broadcasting Company ("Independence"). Further reply comments were late-filed by Prairie.[6]

2. *Pleadings.* Prairie filed a counterproposal to the Bloomington proposal, proposing the allotment of Channel 295A at San Pedro, Texas, as the community's first local aural transmission service. In support of its proposal, Prairie states that San Pedro is located in Nueces County and has a population of 7,634. In order to accommodate the allotment at San Pedro, Prairie advocates that the Commission grant the proposed substitution of Channel 299C3 for Channel 296A at Bishop, Texas on MM Docket No. 91-220.[7] Prairie argues that a first local aural transmission service at San Pedro is in the best interest of the public and should be preferred over an upgrade at Bloomington. Prairie states its intention to apply for Channel 295A at San Pedro, if allotted. In its reply comments, Prairie reaffirms its intention to apply for the channel.

3. CRB filed a counterproposal to the Pierce proposal, proposing the allotment of Channel 296A at Markham, Texas, as the community's first local aural transmission service. CRB states that Markham is listed in the 1980 U.S. Census as a Census Designated Place ("CDP") with a population of 1,554. Markham has a post office, a town constable, a volunteer fire department, a community center, retail establishments, and an elementary school. Furthermore, CRB contends that the public interest is enhanced by the proposed allotment at Markham because the South Texas Nuclear Plant is in proximity, citing *Tri-Valley Broadcasting Co.*, 4 FCC Rcd 4711 (1989).[8] Moreover, CRB claims that the proposed Markham allotment should be

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[1] The communities of Markham, San Pedro and Bishop, Texas, have been added to the caption.

[2] Tschirhart's request to change Station KVMK(FM)'s call letters to KLUB(FM) was granted on December 1, 1992.

We note that Tschirhart failed to verify its petition for rule making pursuant to Section 1.52 of the Commission's Rules. Although such failure can result in the dismissal of a petition, we have considered Tschirhart's proposal because such consideration will not prejudice any other proposals in this proceeding. *See Discussion, infra.* We note that subsequent pleadings were filed on Tschirhart's behalf by counsel and therefore complied with Section 1.52.

[3] Public Notice of the CRB and Prairie counterproposals was given on October 7, 1991, Report No. 1863.

[4] Reply comments to the Bloomington proposal were filed by Cosmopolitan reiterating the arguments stated in its petition to deny. These reply comments were not filed pursuant to Commission Rules 1.415 and 1.420 and therefore will not be considered.

BBA's reply comments concern the conflict between its counterproposal in MM Docket No. 91-220 to allot Channel 299C2 at Benavides, Texas, and the Prairie proposal in the instant docket to allot Channels 295A and 299C3 at San Pedro and Bishop, respectively. That conflict was resolved in MM Docket No. 91-220 and thus BBA's reply comments will not be discussed in this proceeding. *See* n.7, *infra.*

[5] Tschirhart's supplement submits the original copy of the Technical Statement of Larry Tschirhart, president of Tschirhart Broadcasting, Inc.

[6] Although Independence's statement in response to reply comments, motion to strike and Prairie's further reply comments were untimely filed, they were accompanied by requests for their acceptance. The Commission's Rules do not contemplate the filing of pleadings beyond the comment and reply comment periods unless specifically requested, as set forth in the *Notice.* Therefore, the pleadings will not be considered herein.

[7] The proposed substitution of Channel 299C3 for Channel 296A at Bishop, Texas, was denied. The counterproposal filed by BBA to allot Channel 299C2 at Benavides, Texas, was granted. *See* MM Docket No. 91-220, 7 FCC Rcd 5116 (1992), *recon. pend.* This proceeding can be resolved without prejudice to MM Docket No. 91-220.

[8] In *Tri-Valley*, the Commission upheld the grant of a waiver for an application specifying a short-spaced site for a Class A channel at Hinsdale, New Hampshire. We found that strong public interest considerations outweighed the minimal predicted

preferred over the proposed Pierce allotment because Markham has a larger population. Therefore, argues CRB, Markham demonstrates a greater need than Pierce for a first local aural transmission service, citing *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 101 (1982); *Du Page Broadcasting, Inc.*, 19 FCC 2d 250 (1969); and *Cornwall Broadcasting Corp.*, 89 FCC 2d 704 (1982). Accordingly, CRB urges that the Commission allot Channel 296A at Markham and substitute Channel 295C3 at Bloomington. CRB states that it will apply for Channel 296A if allotted to Markham.

4. In response to CRB's counterproposal and in reply comments to CRB and Prairie's counterproposal, Tschirhart argues that the proposed allotment of Channel 296A at Markham, as well as the San Pedro and Pierce allotments, require the imposition of a southern site restriction at Bloomington. Tschirhart objects to the imposition of a southern site restriction at Bloomington to accommodate an allotment at either Pierce or Markham because with such a restriction, the Bloomington station would provide little or no expanded coverage.[9] Tschirhart asserts that Markham, rather than Pierce, is "more likely" to meet the Commission's criteria for a "community." In addition, Tschirhart states that both the Pierce and San Pedro proposals conflict with its own proposed site and CRB's proposed site for Bloomington, and that the San Pedro proposal also conflicts with the restricted site proposed by the Commission. Therefore, in an effort to resolve the conflict, Tschirhart (as does Trident) recommends that alternate Channel 223A, with the imposition of a site restriction, be allotted to Markham. The allotment of Channel 223A at Markham, claims Tschirhart, will also permit the proposed allotment of Channel 295A at San Pedro. Tschirhart urges that since both San Pedro and Markham are deserving of a first local aural transmission service, it would be more "spectrally efficient" and in the public interest to grant its proposed alternative proposal.

5. In their comments on the Pierce proposal, CRB, Tschirhart and U.S. Radio contend that Pierce is not a "community" for allotment purposes. CRB and Tschirhart submit documentation showing that Pierce is not listed in the 1980 U.S. Census or the *1990 Rand McNally Road Atlas*, contrary to Trident's assertions. Tschirhart states that Pierce (population 150)[10] is located in Wharton County and is unincorporated. Tschirhart argues that, with the exception of a post office, Pierce has no local government services. Tschirhart also asserts that Pierce already receives numerous AM and FM aural reception services. U.S. Radio argues that Trident fails to demonstrate social, economic or cultural indicia required for a "community" sufficient to warrant a new allotment, citing *Revision of FM Assignment Policies and Procedures, supra*. Accordingly, CRB, Tschirhart and U.S. Radio conclude that since Pierce does not meet the Commission's criteria for a "community," Trident's petition should be denied. Moreover, Tschirhart and U.S. Radio allege that the Pierce petition was filed "solely to block" U.S. Radio's pending application (File No. BMPH-890613IC) for Station KKZR(FM) (formerly KJZS(FM)), Channel 295C, Conroe, Texas, to relocate its transmitter site.[11]

6. In its reply comments, Trident rejects the claim that Pierce is not a "community" for allotment purposes. In support of its proposal, Trident states that Pierce was platted in 1894, and has donated "city blocks" to Wharton County to be used as a courthouse, an administrative facility for Precinct 4, a park and for educational purposes. Trident also asserts that the community has a post office, zip code, railroad and citizens who reside in Pierce. In addition, Trident submits documentation showing that Pierce is listed in the *1990 Rand McNally Road Atlas* and the *National Atlas*. Trident contends that based on this showing, Pierce is a "geographically identifiable population grouping" that has been in existence for almost a century.

7. Moreover, Trident states that the Pierce proposal does not conflict with the pending application of Station KKZR(FM) in Conroe, Texas, to modify its transmitter site. In fact, Trident claims that any site chosen by Station KKZR(FM) that meets the Commission's technical requirements would not conflict with the Pierce proposal. Additionally, Trident seeks to resolve the conflict between the Pierce and Markham proposals by suggesting an alternate channel for Markham. In order to accommodate both the Pierce and Markham proposals, Trident recommends that Channel 223A in lieu of Channel 296A be allotted at Markham.

8. In its petition to deny the Bloomington upgrade, Cosmopolitan, licensee of Station KTXN-FM, Channel 254C1, Victoria, Texas, argues that Bloomington is unincorporated and never warranted the allotment of a radio station. Cosmopolitan claims that a Class A channel was allotted at Bloomington "solely for the convenience of a now defunct local television station in Victoria to provide it with a means of diversification and to cover the city of Victoria." Cosmopolitan asserts that the proposed upgrade is intended to serve Victoria rather than Bloomington since its city grade signal is far more powerful than is required to serve just the community of Bloomington. Bloomington, claims Cosmopolitan, already has a financially troubled and over-saturated market. The petition, argues Cosmopolitan, demonstrates "a thinly veiled bending of the rules that

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interference which could result from authorizing operation of Channel 285A as the community's first local aural transmission service. Since the community was in close proximity to the Vermont Yankee Nuclear Power Plant, and did not receive adequate service from other broadcast stations in the area due to the nature of the terrain, the proposed facility also would provide the community with emergency communications capabilities in the event of a nuclear accident.

[9] Tschirhart argues that the restricted Bloomington site proposed by the Commission in the *Notice* would cause its proposed Class C3 facility to provide a 60 dBu signal to almost 10,000 fewer people than its present construction permit for a Class A facility. Tschirhart states that the population covered by its Class C3 site is 93,148, whereas the Commission's restricted site only covers 83,579. Tschirhart claims that the site proposed by the Commission would require added construction costs and a new tower and, consequently, "is of no interest to Tschirhart." Accordingly, Tschirhart asserts that its requested site at reference coordinates 28-39-14 and 96-46-17, would serve the greater public interest since it would provide service to more people. In the alternative, Tschirhart states that if the Commission, in order to accommodate the Pierce proposal, imposes a restricted site south of Bloomington, Tschirhart would prefer to maintain its Class A status.

[10] Population figures taken from the *1991 Rand McNally Commercial Atlas and Marketing Guide* unless otherwise indicated.

[11] Tschirhart and U.S. Radio submit no evidence in support of this allegation, and therefore we will not address this claim. U.S. Radio's request to change Station KJZS(FM)'s call letters to KKZR(FM) was granted on September 4, 1992.

only an individual will benefit at the expense of all other sectors in the market." Cosmopolitan contends that Tschirhart can expand its coverage area by increasing its Class A station to the maximum of 6,000 watts. Tschirhart, asserts Cosmopolitan, has demonstrated in the past "a pattern of proposing, building, and running, or in the alternative, dumping stations (and/or applications)." Cosmopolitan submits that based on the 1990 Census, the population and media complement demonstrate that an additional Victoria radio station is not warranted. Cosmopolitan alleges that Tschirhart has an application pending for a studio-transmitter link ("STL") channel which demonstrates Tschirhart's desire to serve Victoria rather than Bloomington. Accordingly, Cosmopolitan urges that petitioner's request for an upgrade at Bloomington be denied.

9. In its reply comments to Cosmopolitan's petition to deny, Tschirhart asserts that the petition was filed as a "vendetta" by the owner of Station KTXN-FM against Tschirhart resulting from Tschirhart's refusal to join in a business venture. Tschirhart also avows that the petition was filed because of an alleged debt by Tschirhart to Station KTXN-FM's owner for use of its tower. Thus, the petition is, argues Tschirhart, a "calculated action" to force Tschirhart to pay a debt that it does not owe.

10. Tschirhart further argues that Cosmopolitan's only valid objection to the Bloomington upgrade is the competitive effects the upgrade would have on the Victoria radio market. The Commission, states Cosmopolitan, has a longstanding policy of encouraging competition and that policy should be applied in this instance. Tschirhart submits documentation demonstrating that although a Class A station provides a 60 dBu signal to 100% of the city of Victoria, the proposed upgrade provides no new coverage to the city. Tschirhart claims that the proposed upgrade provides 70 dBu city grade coverage to Bloomington but does not cover Victoria. Thus, asserts Tschirhart, Cosmopolitan's argument that the proposed upgrade is "tainted" due to its ability to provide new service to Victoria is patently false. Tschirhart concedes, however, that the proposed upgrade would provide expanded service not only to Bloomington, but to the surrounding areas in Victoria County. Tschirhart refutes Cosmopolitan's "vague allegation" of an abuse of the Commission's rule making process by "bending the rules." Furthermore, Tschirhart argues that Cosmopolitan's allegation that Tschirhart has an application pending for a STL channel is erroneous. In view of the foregoing, Tschirhart urges that Cosmopolitan's petition to deny the upgrade at Bloomington be denied.

11. *Discussion.* It is the Commission's policy that, if a community is not incorporated or listed in the census reports, the proponents of an allotment must show the place to be a "geographically identifiable population grouping."[12] Although the proponents need not show that the borders of the locality are precisely ascertainable, what must be shown is that residents of the locality are commonly regarded as a distinct group. This can be proven by the "testimony of local residents or by objective indications of the existence of a common perception that a locality's populace constitutes a distinct 'geographical population grouping'."[13] Examples of objective indications of community status may include, for instance, copies of receipts from local businesses, photographs of local churches, the existence of political, commercial, social and religious organizations, and services in the community. Another indication of community status is "whether the residents function as and conceive of themselves as residents of a community, around which their interests coalesce."[14]

12. Based upon the showing submitted by Trident and Prairie, we do not believe that either Pierce or San Pedro is a "community" for allotment purposes. However, based on the showing submitted by CRB, we find that Markham is a community for allotment purposes. Markham is a CDP, which is sufficient to establish community status. *See Revision of FM Assignment Policies and Procedures, supra,* at 101. Although the 1992 edition of the *Rand McNally Commercial Atlas and Marketing Guide* lists Pierce and San Pedro as having populations of 170 and 150, respectively, the towns are neither incorporated nor listed in the U.S. Census. In addition, Trident and Prairie have not shown other indicia of community status such as political, social, or business organizations, or testimony of local residents. In this regard, it appears that there is no local government in either community. While we recognize that each community has a post office and/or zip code, the presence of a post office and a zip code is not sufficient to establish "community" status. *See Coker, Alabama,* 43 RR 2d 190, 193 (1978). Furthermore, although Trident alleges that Pierce has a railroad and "city blocks" donated for use as a courthouse, an administrative facility for Precinct 4, a park and for educational purposes, Trident has not specifically identified these entities or shown that they are intended to serve Pierce, as opposed to other areas. This is a critical deficiency because, in past cases, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. *See, e.g., Gretna et al, Florida,* 6 FCC Rcd 633 (1991) and cases cited therein; *Malone and Owls Head, New York,* 3 FCC Rcd 5243 (1988); *cf. Semora, North Carolina, supra,* n.8. In addition, although Pierce and San Pedro are listed in the *1992 Rand McNally Commercial Atlas and Marketing Guide,* mere geographical location is not sufficient to establish "community" status. *See Vimville, Mississippi,* 48 FR 5974 (1983). Accordingly, we believe that the record in this proceeding sufficient to find that Markham is a community, but insufficient to find that Pierce and San Pedro are "communities" for allotment purposes. Therefore, we will allot Channel 223A at Markham, and will not allot Channel 296A to Pierce nor Channel 295A to San Pedro.[15]

13. With respect to Cosmopolitan's arguments concerning the competitive effects the Bloomington upgrade would have on the Victoria radio market, the Commission no longer addresses the potential economic impact of new allotments on existing stations. *See FM Channel Assign-*

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[12] *Revision of FM Assignment Policies and Procedures, supra.*

[13] *See Semora, North Carolina,* 5 FCC Rcd 934 (1990). *See also Beacon Broadcasting,* 2 FCC Rcd 3469 (1987), *recon. denied,* 2 FCC Rcd 7562 (1987).

[14] *See Mighty-Mac Broadcasting Co.,* 58 RR 2d 599, 603 (1985); *North Naples, Florida,* 41 RR 2d 1549, 151 (1977).

[15] Since other channels may be available for allotment to San Pedro, our decision in this proceeding may not preclude Prairie or any other party from filing a new petition for rule making which would provide additional information regarding its status as a "community."

ments; Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd 638 (1988), *aff'd* 4 FCC Rcd 2276 (1989). Furthermore, Cosmopolitan's arguments that Tschirhart intends to serve Victoria rather than Bloomington are unsubstantiated and therefore will not be addressed further.

14. Based on the information provided to us, we believe that the public interest would be served by the substitution of Channel 295C3 for Channel 295A at Bloomington, Texas, since it would provide the community with an expanded coverage area FM service. We will also allot Channel 223A at Markham, Texas, as the community's first local aural transmission service. An engineering analysis has determined that Channel 295C3 can be substituted at Bloomington in compliance with the Commission's minimum distance separation requirements at Tschirhart's requested site with a site restriction of 12.3 kilometers (7.6 miles) east.[16] Additionally, Channel 223A can be allotted to Markham with a site restriction of 8 kilometers (5.0 miles) southwest.[17] As proposed, we shall also modify Station KLUB(FM)'s construction permit to specify operation on Channel 295C3 in lieu of Channel 295A at Bloomington. Since Bloomington is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence by the Mexican government has been obtained.

15. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 28, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Bloomington, Texas	295C3
Markham, Texas	223A

16. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Tschirhart Broadcasting, Inc. for Station KLUB(FM), Bloomington, Texas, IS MODIFIED to specify operation on Channel 295C3, in lieu of Channel 295A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

17. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Tschirhart Broadcasting, Inc., permittee of Station KLUB(FM) is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade at Bloomington.

18. IT IS FURTHER ORDERED, That the petitions of F.W. Hannel d/b/a Trident Broadcasting of Texas to allot Channel 296A at Pierce, Texas (RM-7641), and of F.W. Hannel d/b/a Prairie Broadcasting Company to allot Channel 295A at San Pedro, Texas (RM-7821), ARE DENIED.

19. IT IS FURTHER ORDERED, That the Petition to Deny the Bloomington upgrade filed by Cosmopolitan Enterprises of Victoria, Inc., IS DENIED.

20. The window period for filing applications for Channel 223A at Markham, Texas, will open on **June 29, 1993,** and close on **July 29, 1993.**

21. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

22. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[16] Since the site restriction for Bloomington was based on the allotment of Channel 296A at Pierce and that channel is not allotted herein, we are able to accommodate Tschirhart's requested site. The coordinates for Channel 295C3 at Bloomington are North Latitude 28-39-14 and West Longitude 96-46-17.

[17] The coordinates for Channel 223A at Markham are North Latitude 28-53-51 and West Longitude 96-06-26.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-121

In the Matter of

Amendment of Section 73.202(b), RM-8220
Table of Allotments,
FM Broadcast Stations.
(Buena Vista, Colorado)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 16, 1993; Released: May 17, 1993

Comment Date: July 6, 1993
Reply Comment Date: July 21, 1993

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Riley M. Murphy ("petitioner"), permittee of Station KBVC(FM), Channel 281A, Buena Vista, Colorado, seeking the substitution of Channel 281C3 for Channel 281A and modification of her permit accordingly to specify operation on the higher powered channel. Petitioner stated her intention to apply for Channel 281C3 if allotted to Buena Vista, as requested.

2. We believe the public interest would be served by proposing the substitution of Channel 281C3 for Channel 281A at Buena Vista since it could provide an expanded coverage area FM service to the community. Channel 281C3 can be allotted to Buena Vista at the petitioner's specified site, located 21.0 kilometers (13.1 miles) south of the community,[1] consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.

3. The petitioner's modification request at Buena Vista conforms with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we shall propose to modify the permit for Station KBVC(FM) without entertaining competing expressions of interest in the use of Channel 281C3 at Buena Vista, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

4. In view of the above, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Buena Vista, Colorado, as follows:

City	Channel No. Present	Proposed
Buena Vista, Colorado	281A	281C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **July 6, 1993,** and reply comments on or before **July 21, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Mark N. Lipp, Esq.
Mullin, Rhyne, Emmons & Topel, P.C.
1000 Connecticut Ave., N.W.
Suite 500
Washington, D.C. 20036

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] Coordinates at the petitioner's specified site for requested Channel 281C3 at Buena Vista are 38-39-49 and 106-12-50.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-122

In the Matter of

Amendment of Section 73.202(b), RM-8216
Table of Allotments,
FM Broadcast Stations.
(Clarkrange, Tennessee)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 16, 1993; Released: May 17, 1993

Comment Date: July 6, 1993
Reply Comment Date: July 21, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by New Hope Radio ("petitioner"), requesting the allotment of Channel 284A to Clarkrange, Tennessee, as the community's first local FM service.[1] Petitioner states that it will apply for Channel 284A, if allotted.

2. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. In this regard, petitioner states that Clarkrange, although once incorporated, the citizens elected to "unincorporate" the community but retain local police, fire and water service. Petitioner submits that Clarkrange has its own bank, Post Office, and schools. Petitioner notes that the 1990 Census figure for the Clarkrange Division of Fentress County was 3,113 persons. However, since Clarkrange is not listed in the 1990 U.S. Census,[2] petitioner should present the Commission with further information to demonstrate that Clarkrange has social, economic, cultural, and governmental indicia to qualify it as a "community" for allotment purposes.[3]

3. We believe the public interest would be served by seeking further information on the status of Clarkrange as a community for allotment purposes, since the allotment of Channel 284A could provide the community with a first local FM service. Channel 284A can be allotted to Clarkrange in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.1 kilometers (0.7 miles) southwest in order to avoid a short-spacing to the reference coordinates of Channel 284A, Coalmont, Tennessee.[4]

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Clarkrange, Tennessee	--	284A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **July 6, 1993,** and reply comments on or before **July 21, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

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[1] Although petitioner's request indicates that the original copy of its proposal was signed by its consultant, it failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In absence of such verification, the petition may be dismissed. Section 1.402(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in its comments.

[2] Clarkrange is listed in the 1993 Rand McNally Commercial Atlas and attributed with a population of 250. However, mere geographical location is not sufficient to establish "community" status. *See Vimville, Mississippi*, 48 FR 5974 (1983); and *Hannibal, Ohio*, 6 FCC Rcd 2144 (1991).

[3] *See, e.g., Gretna, et. al., Florida*, 6 FCC Rcd 633 (1991); *Oak Grove, Florida*, 5 FCC Rcd 3774 (1990); *Statenville, Georgia*, 5 FCC Rcd 2685 (1990); *East Hemet, et. al., California*, 4 FCC Rcd 7895 (1989); and *Beaver Springs, Pennsylvania*, 4 FCC Rcd 5373 (1989).

[4] The coordinates for Channel 284A at Clarkrange are North Latitude 36-10-29 and West Longitude 85-01-31. Petitioner proposed coordinates North Latitude 36-10-00 and West Longitude 85-01-00 with a site restriction of 1.9 kilometers (1.2 miles) southeast. However, the Commission generally does not protect a prospective applicant's desired transmitter site for a new allotment if a less restrictive site is available, as there is no guarantee that the petitioner will ultimately become the licensee. Furthermore, the site restriction will provide protection to the reference coordinates of Channel 284A at Coalmont. We note that the Commission has issued a construction permit to Cumberland Communication Corporation, permittee for Station WSGM-FM, Channel 284A at Coalmont at coordinates that are fully spaced to the site specified by petitioner. However, until Station WSGM-FM receives a license to operate on Channel 284A in accordance with its outstanding construction permit (BPH-900507ML), we will protect the coordinates at which Channel 284A at Coalmont was originally allotted.

Kirk A. Tollett
4001 Highway 78 East
Jasper, Alabama 35501
(Consultant for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-19

In the Matter of

Amendment of Section 73.202(b), RM-8176
Table of Allotments,
FM Broadcast Stations.
(Kennett, Missouri)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 28, 1993; Released: May 17, 1993

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 953 (1993), proposing the allotment of Channel 282A to Kennett, Missouri, as that community's second FM broadcast service. The *Notice* was issued in response to a petition filed by PM Broadcasting, Inc. ("petitioner"). Petitioner filed comments in support of the allotment of Channel 282A at Kennett and stated its intention to file an application for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 282A to Kennett, Missouri, in order to provide the community with a second FM broadcast service. As indicated in the *Notice*, Channel 282A can be allotted to Kennett in compliance with the Commission's spacing requirements provided there is a site restriction 10.9 kilometers (6.8 miles) northwest of the community.[1] The site restriction will prevent a short spacing to Station WTNV, Channel 281C1, Jackson, Tennessee, and to Station WRVR-FM, Channel 283C1, Memphis, Tennessee.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 28, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Kennett, Missouri	255C, 282A

4. The window period for filing applications for Channel 282A at Kennett will open on **June 29, 1993,** and close on **July 29, 1993**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 282A at Kennett are 36-20-07 and 90-04-39.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-445

In the Matter of

Amendment of Section 73.202(b),	RM-7323
Table of Allotments,	RM-7425
FM Broadcast Stations.	
(Brooksville or Quitman,	
Mississippi)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 29, 1993; Released: May 17, 1993

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 5944 (1990), which optionally proposed the allotment of Channel 255C3 to Brooksville, Mississippi (RM-7425), or the substitution of Channel 255C3 for Channel 255A at Quitman, Mississippi (RM-7323). The *Notice* was issued in response to a petition filed by G. Dean Pearce ("Pearce"), proposing the allotment of Channel 255C3 to Brooksville, as that community's first local service and a petition filed by Quitman Broadcasting Company, Inc. ("Quitman Broadcasting"), requesting the substitution of Channel 255C3 for Channel 255A at Quitman and modification of the license for Station WYKK(FM) to specify operation on the higher class channel.[1] Pearce filed comments reaffirming his interest in Channel 255C3 at Brooksville. Quitman Broadcasting, Bravo Communications, Inc. ("Bravo") and Chatterbox, Inc. ("Chatterbox") filed joint comments and a counterproposal.[2] Pearce, Chatterbox and Bravo filed reply comments. Quitman Broadcasting filed a motion to accept late comments and supplemental comments.[3]

2. Pearce continues to support the allotment of Channel 255C3 at Brooksville. Pearce argues that based on the Commission's established criteria, preference should be given to the Brooksville proposal as it provides a first local aural transmission service to the community while the proposal for Quitman simply expands the coverage area of an existing service.

3. On February 25, 1993, Quitman Broadcasting filed supplemental comments looking toward the resolution of this proceeding. According to Quitman Broadcasting, recent events have created separations in the spectrum that allows for the allotment of a new service at Brooksville and the simultaneous upgrade of Station WYKK(FM), Quitman. Specifically, Quitman Broadcasting states that it must no longer protect Channel 257A, Station WEEZ, Heidelberg, Mississippi, as Station WEEZ has begun operating on Channel 257C2 at a site that clears Station WYKK(FM) as a Class C3 facility at the city reference coordinates.[4] Further, by using these alternate coordinates, Channel 255C3 can also be allotted to Brooksville. Quitman Broadcasting contends that although the allotment of Channel 255C3 at Brooksville will require a site restriction to accommodate Channel 255C3 at Quitman, city grade coverage wil be provided.

4. Based on the above information, we believe the public interest would be served by the substitution of Channel 255C3 for Channel 255A at Quitman, Mississippi, and allotment of Channel 255C3 at Brooksville, Mississippi. A staff engineering analysis has determined that Channel 255C3 can be allotted to Quitman at petitioner's specified

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[1] We recognize that Pearce and Quitman failed to comply with Section 1.52 of the Commission's Rules in filing their initial petitions. However, the Commission placed all parties on notice, via *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911 n.41 (1990), that the verification requirements of Section 1.52 of the Rules would be strictly enforced in the allotment proceedings. The effective date of that item was October 4, 1990. Therefore, because the petitions filed by Pearce and Quitman were filed prior to the effective date of that proceeding, we shall accept the petitions.

[2] Quitman, Bravo and Chatterbox jointly filed a counterproposal requesting the substitution of Channel 255C3 for Channel 255A at Quitman, Mississippi, and modification of the license for Station WYKK(FM); the substitution of Channel 255C3 for Channel 261A at Artesia, Mississippi, and modification of the license for Station WZIX(FM); and the substitution of Channel 261C2 for Channel 261A at Grenada, Mississippi, and modification of the license for station WQXB(FM). The proposal also requested the allotment of Channel 257A to Brooksville in lieu of Channel 255C3.

We note that in MM Docket No. 89-406, Chatterbox and Bravo proposed the substitution of Channel 260C2 for Channel 261A at Artesia and the substitution of Channel 261C2 for Channel 261A at Grenada. These substitutions have been granted. *See Report and Order*, 7 FCC Rcd 56 (1992), *recon. granted in part*, 7 FCC Rcd 4838 (1992). Therefore, we need not consider the Artesia and Grenada proposals herein.

Furthermore, the request to allot Channel 257A to Brooksville in lieu of Channel 255C3 is unacceptable for consideration. When filed, the reference coordinates specified for Channel 257A at Brooksville were mutually exclusive with the reference coordinates specified for Channel 260C2 at Artesia in MM Docket No. 89-406. Counterproposals must be technically and procedurally correct at the time of filing. *See Fort Bragg, California*, 6 FCC Rcd 5817 (1991), and *Broken Arrow and Bixby, Oklahoma and Coffeeville, Kansas*, 3 FCC Rcd 6507 (1988), *recon. denied*, 4 FCC Rcd 6981 (1989). In an effort to accommodate all proposals in this proceeding, the Commission's staff performed an engineering analysis to determine if Channel 257A could be allotted to Brooksville at alternate reference coordinates and was unable to locate a fully spaced site in compliance with the Commission's Rules. Therefore, the counterproposal was not placed on public notice. Comments filed in response to the counterproposal need not be considered.

[3] Because these comments support a proposal which resolves conflicting issues in this proceeding, we believe acceptance is in the public interest. *See* Commission Rule 1.415(d).

[4] Station WEEZ is now licensed on Channel 257C2.

site.[5] We shall also allot Channel 255C3 to Brooksville, Mississippi, at a site 21.4 kilometers (13.3 miles) northeast of the community.[6] The site restriction will prevent a short spacing to the allotment of Channel 255C3 at Quitman, Mississippi. In accordance with Section 1.420(g) of the Commission's Rules, we have authorized a modification of the license for Station WYKK(FM), Quitman, Mississippi.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 28, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Brooksville, Mississippi	255C3
Quitman, Mississippi	255C3

6. The window period for filing applications for Channel 255C3 at Brooksville, Mississippi, will open on **June 29, 1993,** and close on **July 29, 1993**.

7. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WYKK(FM), Quitman, Mississippi, IS MODIFIED to specify operation on Channel 255C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That the counterproposal filed by Quitman Broadcasting Company, Inc., Bravo Communications, Inc. and Chatterbox, Inc. IS DENIED.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Quitman Broadcasting
Company, Inc.
WYKK Radio
Montrose Road
Quitman, Mississippi 39355

Bravo Communications, Inc.
WZIX Radio
P.O. Box 8902
Columbus, Mississippi 39701

Chatterbox, Inc.
WQXB Radio
P.O. Box 946
Grenada, Mississippi 38901

Pine Belt Broadcasting, Inc.
Station WEEZ
318 West Fifth Street
Laurel, Mississippi 39940

10. The window period for filing applications for Channel 255C3 at Brooksville, Mississippi, will open on **June 29, 1993,** and close on **July 29, 1993**.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[5] The coordinates for Channel 255C3 at Quitman are 32-02-00 and 88-44-00.
[6] The coordinates for Channel 255C3 at Brooksville are 33-24-45 and 88-29-25.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-134

In the Matter of

Amendment of Section 73.606(b), RM-8226
Table of Allotments,
TV Broadcast Stations.
(Ishpeming, Michigan)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 30, 1993; Released: May 17, 1993

Comment Date: July 6, 1993
Reply Comment Date: July 21, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Thomas Scanlan ("petitioner"), requesting the allotment of VHF Television Channel 10 to Ishpeming, Michigan, as that community's first local television service. Petitioner provides information in support of the proposal and states his intention to apply for the channel, if allotted.

2. Ishpeming (population 7200),[1] in Marquette County (population 70,887), is located in the Upper Peninsula of Michigan, approximately 20 kilometers (13 miles) southwest of Marquette, Michigan.

3. A staff engineering analysis of the proposal indicates that VHF Television Channel 10 can be allotted to Ishpeming consistent with the minimum distance separation requirements of Section 73.610 of the Commission's Rules provided there is a site restriction 27.3 kilometers (16.9 miles) west of the community.[2] The proposed allotment of Channel 10 to Ishpeming will require a minus offset.[3] Although the Commission has imposed a temporary freeze on new television allotments in certain metropolian areas, the proposed allotment at Ishpeming is not affected thereby.[4] Since Ishpeming is located within 400 kilometers (250 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be obtained for this proposal.

4. We believe the public interest would be served by proposing the allotment of Channel 10 to Ishpeming, Michigan, since it could provide the community with its first local TV service. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Ishpeming, Michigan	---	10-

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **July 6, 1993,** and reply comments on or before **July 21, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Kevin C. Boyle
Latham & Watkins
1001 Pennsylvania Avenue, N.W., Suite 1300
Washington, D.C. 20004

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served

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[1] Population figures are taken from the 1990 U.S. Census.

[2] The coordinates for Channel 10 at Ishpeming are 46-31-23 and 88-00-52.

[3] "A station with a 'plus' or 'minus' offset is required to operate with its carrier frequency 10 kHz above or below the normal carrier frequency. A different offset between two television stations reduces interference and makes possible the separation criteria set forth in our Rules." *Crandon, Wisconsin*, 3 FCC Rcd 6765 n.1 (1988).

[4] The Commission has imposed a freeze on new television allotments in certain metropolitan areas. *See Notice of Inquiry*, 2 FCC Rcd 2125 (1987) and *Order*, 52 FR 28346, July 29, 1987.

on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BAY ALARM COMPANY

Applications for Modification of Private Operational-Fixed Service Stations — File Nos. 783879-81

ORDER

Adopted: May 7, 1993; Released: May 17, 1993

By the Deputy Chief, Licensing Division:

1. On November 18, 1992, Bay Alarm Company requested reinstatement *nunc pro tunc* of three applications for authorization in the Private Operational-Fixed Microwave radio service to add frequencies 952.1125/928.1125 MHz to facilities in the Sacramento, CA area. In the alternative Bay Alarm seeks a finder's preference for a nearby station in the Private Operational Fixed Microwave Radio Service. Although not styled as a petition for reconsideration, Bay Alarm has requested in a timely manner that we reconsider the dismissal of its applications. *See* 47 CFR § 1.106.

I. BACKGROUND

2. Bay Alarm filed its applications on April 23, 1992, and included a short spacing agreement with Chevron's station WNEH855. Chevron was licensed to use those frequencies near Bay Alarm's facilities. In the short spacing agreement, Chevron admitted that it had not built the station and therefore had not met the construction deadline for its station. Chevron then returned its license for cancellation.

3. Because Chevron never constructed its station, the short spacing agreement filed by Bay Alarm was invalid. By letter dated November 2, 1992, the Bay Alarm applications were dismissed as defective because these frequencies were not available for reassignment as of the filing of the Bay Alarm applications. These frequencies became available for reassignment on September 22, 1992 in accordance with the Public Notice issued August 25, 1992.

II. DISCUSSION

4. Bay Alarm asserts that its applications were wrongfully dismissed and should be reinstated *nunc pro tunc*. In support of its request, Bay Alarm presents a variety of arguments from which we might choose a basis for reinstating its applications. Bay Alarm applied at the awkward time when Chevron's license had cancelled automatically for failure to construct, but still had not been cleared from the Commission's records and been placed on Public Notice for reassignment.

5. Bay Alarm asserts that its short spacing agreement with Chevron was simply filed with its applications in an abundance of caution and that the Chevron license had been cancelled prior to its applications. In support of this proposition, Bay Alarm presents a May 10, 1986 letter which Bay Alarm asserts cancelled Station WNEH855.[1] Whether or not this was the case, the Commission policy regarding availability of frequencies for reassignment is that frequencies do not become available for reassignment until they are placed on Public Notice. *See* Public Notice, June 19, 1986. This allows all potential applicants to compete for reassignment of frequencies on an equal footing.

6. Bay Alarm indicates that it already operates on the same frequency at a location closer to WNEH855 than the locations requested. The presence of another short spaced station, contrary to Bay Alarm's assertion, does not obviate the need for Bay Alarm to wait until the frequencies are listed as available for reassignment in a Public Notice, to file an application.

7. Six months prior to the Bay Alarm application, the frequency pair in question, 952.1125/928.1125 MHz appeared in a Public Notice as available for reassignment at latitude 38-37-04 N, longitude 121-24-53 W. *See* Public Notice, March 10, 1989. Bay Alarm reads this notice to allow application for this frequency despite the presence of the Chevron license. The coordinates cited are more than fifty miles from the Chevron facility, which is at latitude 38-07-51 N, longitude 122-08-04 W.

8. Bay Alarm also asserts that 47 CFR § 0.434(e) provides that the data bases maintained by the Commission are unofficial records and that the March 10, 1989 Public Notice should govern. As discussed above, the March 10, 1989 Public Notice did not list these frequencies as available at the Chevron site.

9. In the alternative Bay Alarm requests a finder's preference for the Chevron station. The finder's preference program established by the Commission is only applicable to licenses in the Land Mobile services for violations of specific Part 90 rules. Report and Order, 6 FCC Rcd. 7297 (1991). Chevron was not subject to any of the Rules in Part 90, and is not in violation of any of these rules.

10. The Commission's rules may appear to operate harshly in this instance. Bay Alarm could not get a valid short space agreement nor could it apply for the frequencies due to the presence of the Chevron license in the Commission's records. This policy, however, is necessary to allow for the orderly reassignment of frequencies. To hold otherwise would allow the assignment of the use of a frequency in a particular area by a licensee with an unconstructed system. When a licensee fails to construct its system in a timely fashion, it loses the right to assign the right to use of the frequency. Commission policy provides that applicants can compete for the frequencies on an equal basis after they have been placed on a Public Notice as available for reassignment.

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[1] The station identification is illegible, but the letter clearly states that the stations being cancelled were granted on September 23, 1983. The cancellations were due to a response to a February 1, 1985 Commission inquiry. Because the license for Station WNEH855 was not granted until March 1, 1985, it was probably not the subject of the letter in question.

III. ORDERING CLAUSE

11. For the reasons discussed above, IT IS ORDERED THAT the Petition For Reconsideration filed by Bay Alarm is dismissed.

FEDERAL COMMUNICATIONS COMMISSION

W. Riley Hollingsworth
Deputy Chief, Licensing Division

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-298

In re Applications of

BETH KNIGHT	File No. BPH-880516MA
LUCINDA FELICIA PAULOS	File No. BPH-880518MB
BODEGA COMMUNICATIONS, INC.	File No. BPH-880519MD
JOHN A. CAROLLO, JR.	File No. BPH-880519MX
MANZANITA MEDIA, INC.	File No. BPH-880519NR

For Construction Permit for
New FM Station, Channel 229A,
Sebastopol, California

ORDER

Adopted: May 10, 1993; Released: May 17, 1993

By the Commission:

1. The Commission has before it a Petition for Reconsideration of *Memorandum Opinion and Order* (*MO&O*), 7 FCC Rcd 5975 (1992), filed October 9, 1992 by Beth Knight.[1] In the *MO&O*, we denied Knight's Application for Review of a Review Board decision[2] that denied Knight's appeal from a decision of Administrative Law Judge Richard Sippel (ALJ). The ALJ decision dismissed Knight's application in this proceeding for failure of proof and failure to prosecute.[3] By this action we deny reconsideration of the *MO&O*.

2. A petition for reconsideration of an order denying an application for review will be entertained only if it relies on new facts or changed circumstances. 47 C.F.R. § 1.106 (b)(2). It is well settled that we will not grant reconsideration to debate matters upon which we have already spoken. *WWIZ, Inc.*, 37 FCC 685 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966). Knight's Petition for Reconsideration has not demonstrated the existence of new facts or changed circumstances. Indeed, the arguments raised in the pleading are the same as those raised in Knight's earlier Application for Review and in her Appeal of the ALJ's decision. Specifically, Knight contends that the ALJ erred in adding the financial qualifications issues that ultimately led to the dismissal of Knight's application because the petition to reopen the record and add the issues was untimely and that, in any event, there was no rational basis in light of all the circumstances for addition of the issues. These arguments have been fully considered, *see* paragraph 1, *supra*, and merit no further deliberation.

3. ACCORDINGLY, IT IS ORDERED That, the Petition for Reconsideration filed October 9, 1992, by Beth Knight IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[1] Also before the Commission is an Opposition to Petition for Reconsideration filed October 22, 1992 by John A. Carollo, Jr. and a Reply to Opposition filed on October 30, 1992 by Knight.

[2] *Memorandum Opinion and Order*, 7 FCC Rcd 1889 (Rev. Bd. 1992).

[3] *Memorandum Opinion and Order*, FCC 91M-3465, released December 19, 1991.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-2
Phase I

In the Matter of

Filing and Review of Open Network
Architecture Plans

ORDER

Adopted: May 3, 1993; Released: May 17, 1993

By the Commission:

1. The *BOC ONA Order*[1] announced the establishment of a Federal-State Joint Conference (Joint Conference) pursuant to Section 410(b) of the Communications Act,[2] as an ongoing forum for state and federal cooperation to facilitate the development and implementation of Open Network Architecture (ONA). The Order stated that the Joint Conference members would include the Chairman of this Commission, who will serve as Joint Conference chairman, one additional member of this Commission, and seven state commissioners, one from each Bell Operating Company region. On May 4, 1989, the Joint Conference was expanded to include one additional federal Commissioner and six additional state Commissioners.[3] The Order also provided that we would appoint members from the state commissions in consultation with the National Association of Regulatory Utility Commissioners (NARUC).

2. The position of Chairman of the Joint Conference is vacant as a result of the departure of the Honorable Alfred C. Sikes, Chairman of the Commission. Pursuant to the *BOC ONA Order*, we hereby appoint the Honorable James H. Quello to serve as the Chairman of the Joint Conference. Henceforth a copy of all filings in these proceedings shall be served on the Honorable James H. Quello at the following address:

The Honorable James H. Quello
Chairman
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

3. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j) and 410(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 410(b), that James H. Quello, IS APPOINTED to serve as the Chairman of the Federal-State Joint Conference convened in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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[1] Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, 4 FCC Rcd 1, 110, paras. 214-223 (1989) (*BOC ONA Order*), *BOC ONA Reconsideration*, 5 FCC Rcd 3084, *pets. for review pending*, California v. FCC, (9th Cir. No. 90-70336, filed July 5, 1990).

[2] 47 U.S.C. § 410(b).

[3] Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, 4 FCC Rcd 4017 (1989) (*May 4 Joint Conference Order*). The Commission increased state membership on the Joint Conference from seven to thirteen members at the request of NARUC.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and
Telegraph Company,
Complainant,

v. File No. E-92-14

The Mountain States Telephone,
and Telegraph Company, Northwestern
Bell Telephone Company, and,
Pacific Northwest Bell Telephone
Company,
Defendants.

ORDER

Adopted: May 3, 1993; Released: May 17, 1993

By the Commission:

1. On November 20, 1991, American Telephone and Telegraph Company (AT&T) filed the above-captioned complaint against the U S West Operating Companies (U S West) alleging that U S West violated Section 201(b) of the Communications Act of 1934, as amended,[1] by earning in excess of the rate of return prescribed by the Commission for the period January 1, 1989 through December 31, 1990. U S West denied the allegations and moved to dismiss the complaint.

2. On March 18, 1993, after extensive discovery and briefing by the parties, the Commission adopted a Memorandum Opinion and Order which, *inter alia*, granted AT&T's complaint and directed U S West to pay monetary damages.[2] The Memorandum Opinion and Order becomes effective upon its release date[3] and requires U S West to pay the specified damages and accumulated interest within sixty (60) days of such release. On April 9, 1993, prior to release of the Memorandum Opinion and Order, AT&T and U S West filed a joint motion requesting the Commission to dismiss AT&T's complaint against U S West with prejudice. The parties stated that all claims against U S West raised in the complaint had been satisfactorily resolved by the parties and that no purpose would be served by the continued pendency of the proceeding.

3. After careful review of record developed in this matter, including the parties' joint motion, we will vacate the Memorandum Opinion and Order as it pertains to AT&T's claims against U S West and enter the relief requested by the parties. We are persuaded that dismissing this complaint action with prejudice will serve the public interest by eliminating the possibility of further litigation and the expenditure of further time and resources of the parties and of this Commission. We are also satisfied that this action will not adversely affect the interests of any other party.

4. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 208, that the Memorandum Opinion and Order adopted in this matter on March 18, 1993 (FCC 93-152) IS VACATED to the extent indicated above.

5. IT IS FURTHER ORDERED that the parties' joint motion to dismiss with prejudice IS GRANTED and the above-captioned complaint proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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[1] 47 U.S.C. § 201(b) (1991).

[2] Memorandum Opinion and Order, FCC 93-152. The Memorandum Opinion and Order also resolved separate complaints filed by AT&T against the Central Telephone Companies of Iowa, Minnesota, Nevada, North Carolina and Texas, the Telephone Utilities Exchange Carrier Association and its member companies, and the East Ascension Telephone Company. Public notice of the Commission's action resolving the complaints was contained in a News Release issued on March 26, 1993, Report No. CC-504.

[3] *See* Sections 1.4(b)(2) and 1.103(a) of the Commission's Rules, 47 C.F.R. §§ 1.4(b)(2) and 1.103(a).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY,
Complainant,

v.

CENTRAL TELEPHONE COMPANY - IOWA,	File No. E-92-07
CENTRAL TELEPHONE COMPANY - MINNESOTA,	File No. E-92-08
CENTRAL TELEPHONE COMPANY - NEVADA,	File No. E-92-09
CENTRAL TELEPHONE COMPANY - NORTH CAROLINA,	File No. E-92-10
CENTRAL TELEPHONE COMPANY OF TEXAS,	File No. E-92-11
TELEPHONE UTILITIES EXCHANGE CARRIER ASSOCIATION, *et al.*,	File No. E-92-12
THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, NORTHWESTERN BELL TELEPHONE COMPANY, PACIFIC NORTHWEST BELL TELEPHONE COMPANY, and	File No. E-92-14
EAST ASCENSION TELEPHONE COMPANY,	File No. E-92-16

Defendants.

MEMORANDUM OPINION AND ORDER

Adopted: March 18, 1993; Released: May 17, 1993

By the Commission:

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I. INTRODUCTION

1. In this Memorandum Opinion and Order, we award damages to complainant, American Telephone and Telegraph Company (AT&T), for defendants[1] violations of the Commission's rate of return prescription for the period January 1, 1989 through December 31, 1990 for the reasons and to the extent indicated below. As also discussed below, we grant AT&T's request for interest on the damages awarded herein.

II. BACKGROUND

2. The case presented by the complainant is virtually identical to the case by the complainant in *AT&T Communications v. Northwestern Bell Telephone Co., et al.*[2] In that proceeding, we held that local exchange carrier (LEC) rates that produced earnings in excess of a Commission prescription were unjust and unreasonable within the meaning of Section 201(b) of the Communications Act.[3] We also held

[1] Defendants are Central Telephone Company - Iowa (Centel-IA), Central Telephone Company - Minnesota (Centel-MN), Central Telephone Company - Nevada (Centel-NV), Central Telephone Company - North Carolina (Centel-NC), and Central Telephone Company of Texas (Centel-TX) (collectively "Centel") (collectively "Centel companies"); Telephone Utilities Exchange Carrier Association, *et al.* (TUECA); The Mountain States Telephone and Telegraph Company (MTN), Northwestern Bell Telephone Company (NWB), and Pacific Northwest Bell Telephone Company (PNB) (collectively "USWC"); and East Ascension Telephone Company (EATEL).

[2] *American Telephone and Telegraph Co. v. Northwestern Bell Telephone Co.*, 5 FCC Rcd 143 (1990) (*AT&T Liability Order*), *appeal dismissed sub nom. Mountain States Tel. and Tel. Co., et al. v. FCC*, 951 F.2d 1259 (10th Cir. 1991) (per curiam). *See also MCI Telecommunications Corporation v. Pacific Northwest Bell Telephone Co., et al.*, 5 FCC Rcd 216 (1990) (*MCI Liability Order*), *recon. denied*, 5 FCC Rcd 3463 (1990) (*MCI Reconsideration Order*) (jointly "*MCI Orders*"), *appeal dismissed sub nom. Mountain States Tel. and Tel. Co., et al. v. FCC*, 951 F.2d 1259 (10th Cir. 1991) (per curiam).

[3] *AT&T Liability Order* at 143. Section 201(b), 47 U.S.C. § 201(b), provides that "[a]ll charges, practices, classifications, and regulations for and in connection with . . . communication

that a complainant is entitled to recover damages to the extent that it can show that it suffered actual damage as a consequence of such violations. Subsequently, in the damages phase of the proceeding, we held that AT&T had properly shown that it had been harmed by paying the defendants' rates that produced the excessive overall earnings and awarded AT&T monetary damages, plus interest computed at the IRS rate.[4]

3. A detailed accounting of the Commission's rate of return regulatory scheme as well as relevant Commission and court decisions is set forth in the *AT&T Liability Order*[5] and the *AT&T Damages Order*[6] and will not be repeated at length here. However, a brief discussion of the development and implementation of the Commission's rate of return prescription is helpful to our analysis of the instant complaints.

4. Following the divestiture of the former Bell system and the concurrent development of the access charge system,[7] the Commission prescribed a rate of return system for all eight entities that emerged after divestiture (i.e., AT&T and the seven Regional Bell Holding Companies) and approximately 1400 other local exchange carriers as well. In a broad rulemaking proceeding, the Commission adopted: (1) methodologies to be used to prescribe maximum rates of return; (2) procedures for represcribing rates of return on a regular basis; (3) a system of monitoring carriers' earnings; and (4) a requirement that overearnings be refunded, either directly to those who had paid rates that produced the overearnings, or pursuant to automatic, prospective adjustments to tariff rates.[8] For the two-year time period at issue in the instant complaints, January 1, 1989 through December 31, 1990, local exchange carriers, including the defendants, were required to file rates calculated to earn a 12 percent rate of return for overall interstate access.[9] In accordance with the Commission's allowance of a "buffer," carriers were given notice that 12.25 percent would be the maximum allowable rate of return on overall interstate earnings and that 12.40 percent would be the maximum allowable rate of return for any access service category.[10] The buffer[11] would be used to determine whether the prescription had been violated.[12]

5. In January 1988, the U.S. Court of Appeals for the District of Columbia Circuit set aside the automatic refund mechanism as arbitrary and capricious "because it is inconsistent with the rate of return prescription it purports to enforce."[13] The court acknowledged, however, that "the Commission has authority under the Act to order refunds where a carrier has violated an outstanding rate of return prescription."[14]

6. In February 1988, AT&T filed formal complaints against a number of LECs alleging violations of the Commission's rate of return prescription for the October 1, 1985 through December 31, 1986 monitoring period and requesting monetary damages. During the same time period, numerous similar complaints were filed by other interstate access customers alleging rate of return prescription violations for the initial 15-month monitoring period.[15] In January 1990, the Commission released its

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service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful."

[4] AT&T Communications v. Northwestern Bell Telephone Company, FCC 93-69 (released February 8, 1993) (*AT&T Damages Order*).

[5] 5 FCC Rcd at 143-44.

[6] *AT&T Damages Order* at para. 2-3 and 9-10.

[7] The Commission has prescribed for all local exchange carriers, including the defendants, a methodology known as the "access charge system," which carriers are required to follow in tariffing their interstate services. The system determines, *inter alia*, the carriers' overall rate structure and the allocation of costs within that structure, and was in effect during the period covered by the complaints. The access charge system is codified in Part 69 of the Commission's rules. *See* 47 C.F.R. § 69.1 *et seq.* These rules were developed in a proceeding that was the subject of numerous challenges on appeal. With a few exceptions not relevant to the instant complaint proceedings, these appeals were denied by the D.C. Circuit. *See NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

[8] *See* Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Carriers, CC Docket No. 84-800, FCC 85-527 (released Sept. 30, 1985), 50 Fed. Reg. 41,350 (Oct. 10, 1985), (*Phase I Order*), *on reconsideration*, Memorandum Opinion and Order, FCC 86-114 (released March 24, 1986), 51 Fed. Reg. 1103 (Apr. 1, 1986), *on further reconsideration*, 2 FCC Rcd 190 (1987). *See also* Procedures and Methodologies to Establish Reporting Requirements, CC Docket No. 86-127, FCC 86-514 (released Dec. 3, 1986), 52 Fed. Reg. 273 (Jan. 5, 1987).

[9] The Commission prescribed a maximum allowable rate of return of 12 percent for interstate access services for the 1987-1988 monitoring period. *See* Authorized Rate of Return for the Interstate Access Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800, Phase III, FCC 86-354, 51 Fed. Reg. 32,920 (Sept. 17, 1986), *recon. denied*, 2 FCC Rcd 5636 (1987). In December 1989, the Commission continued, on an interim basis, the 12 percent overall rate of return for the interstate access services of the LECs until the Commission completed its represcription proceeding. *See* Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers and Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, 5 FCC Rcd 197 (1989). In 1990, the Commission completed the rate of return proceeding and established a new rate of return for the LECs, which was effective on January 1, 1991, thereby leaving in effect the interim rate of return of 12% for the 1989-1990 period. *See* Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, 5 FCC Rcd 7507 (1990), *appeal docketed sub nom. Illinois Bell Telephone Co., et al. v. FCC*, No. 91-1020 (D.C. Cir. Jan. 11, 1991).

[10] 47 C.F.R. § 65.7004

[11] *See AT&T Liability Order*, 5 FCC Rcd at 143-44:

> . . . the Commission established both an authorized rate of return and a 'spread' or 'buffer' above that return for use in proceedings relating to the enforcement of the prescription. In other words, the authorized return would be employed in computing tariff rates; the spread, or buffer, would be used in combination with the authorized return 'to determine whether a rate of return prescription had been violated.' [footnote omitted.]

[12] *See Phase I Order*, 50 Fed. Reg. at 41,352 (para. 21).

[13] *American Tel. & Tel. Co. v. FCC*, 836 F.2d 1386, 1390 (D.C. Cir. 1988) (*AT&T v. FCC*). For a detailed discussion of *AT&T v. FCC*, *see AT&T Liability Order*, 5 FCC Rcd at 146-48.

[14] *AT&T v. FCC*, 836 F.2d at 1392.

[15] These additional complaints are being dealt with in separate Section 208 complaint proceedings. AT&T also filed complaints for the 1987-1988 monitoring period, which are being dealt with in a separate proceeding.

AT&T Liability Order granting AT&T's complaint and directing AT&T to file a supplemental complaint for damages. In November 1991, AT&T filed additional complaints alleging, *inter alia*, violations of the Commission's prescription for the January 1, 1989 through December 31, 1990 monitoring period by the defendants.[16] In October 1991, the Commission placed all pending rate of return complaints, including AT&T's supplemental complaint for damages, in abeyance pending resolution of a related court remand in *Illinois Bell Tel. Co. v. FCC*.[17] On July 15, 1992, the Bureau released an order establishing further discovery and briefing schedules for these proceedings.[18] Pursuant to the *Discovery Order*, the parties submitted briefs and reply briefs setting forth their respective claims and arguments.[19]

III. DISCUSSION

7. AT&T's damages claim rests primarily on the contention that the proper measure of damages it incurred as a result of defendants' rate of return prescription violations is the difference between the amounts it actually paid defendants' for overall interstate access services during the January 1, 1989 through December 31, 1990 monitoring period and the amount it would have paid if defendants' rates produced earnings that did not exceed the Commission's prescription. Defendants, however, have raised a number of challenges to AT&T's damages claims, including a number of arguments that were previously considered and rejected by the Commission in the *AT&T Liability Order*. We address the parties' pertinent contentions below.

A. Liability For Damages

1. Contentions of the Parties

8. AT&T alleges that the rates it paid for certain of the defendants' interstate access services during the period from January 1, 1989 through December 31, 1990 were unjust and unreasonable in violation of Section 201(b) of the Act, 47 U.S.C. § 201(b). AT&T supports its allegations with evidence taken from reports filed with the Commission by the defendants for the two-year period at issue that show that defendants achieved earnings in excess of the Commission's prescribed rate of return for overall interstate access.[20]

9. AT&T requests that the Commission declare that the defendants' charges for the period from January 1, 1989 through December 31, 1990 are in violation of the rate of return prescription and Section 201(b) of the Act, and order the defendants to pay damages to AT&T equal to the difference between the amount actually paid by AT&T for interstate access service during the period and the amount that AT&T would have paid if the defendants' charges

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[16] The defendants all filed answers and some defendants filed motions to dismiss.

[17] 911 F.2d 776 (D.C. Cir. 1990) (*Illinois Bell I*). The Commission acted on the remand in October 1991. *See* Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, CC Docket No. 86-497, 7 FCC Rcd 296 (1991), *appeal docketed sub nom. Illinois Bell Telephone Co., et al. v. FCC*, No. 91-1020 (D.C. Cir. Jan. 11, 1991).

[18] American Telephone and Telegraph Company v. Central Telephone Company - Iowa, *et al.*, 7 FCC Rcd 4931 (Com. Car. Bur. 1992) (*Discovery Order*). AT&T served interrogatories on all the defendants, to which defendants responded. With the exception of TUECA, the defendants served interrogatories on AT&T, to which AT&T responded. EATEL filed a Motion to Supplement Record, which was opposed by AT&T. As AT&T has had ample opportunity to respond to the issues raised by EATEL in its motion, we grant the motion and accept for filing EATEL's Supplement to Motion to Dismiss. On September 18, 1992, EATEL filed a motion to compel AT&T's answers to its second set of interrogatories, which AT&T opposed. EATEL's second set of interrogatories are virtually identical to interrogatories previously propounded by EATEL that the Bureau did not require AT&T to answer. The Bureau found that EATEL's interrogatories dealing with, *inter alia*, amounts received by AT&T in settlements of other rate of return complaint proceedings and whether such settlements had been passed through to customers in the form of rate reductions were not relevant or reasonably calculated to lead to the discovery of admissible evidence. *See Discovery Order*, 7 FCC Rcd at 4934. The Bureau properly denied EATEL's interrogatories as irrelevant and we have not been persuaded to alter the Bureau's determination. Accordingly, we deny EATEL's motion to compel.

[19] AT&T and the Centel companies filed their briefs on October 19, 1992 and reply briefs on October 29, 1992. In the TUECA proceeding, AT&T and TUECA filed their briefs on October 7, 1992, with AT&T filing a reply brief on October 19, 1992. AT&T and USWC filed their briefs on September 23, 1992, with AT&T filing its reply brief on October 5, 1992 and USWC filing its reply brief on October 8, 1992. In the EATEL proceeding, AT&T filed its brief on October 19, 1992, with AT&T and EATEL filing reply briefs on October 19, 1992. The AT&T briefs (Br.) and reply briefs (RBr.) will be indicated by file number (e.g., AT&T Br. File No. E-92-07). Defendants' briefs (Br.) and reply briefs (RBr.) will be indicated by party (e.g., TUECA Br.).

As a preliminary matter, we note that USWC has stated that it filed its brief directly with the Commission because it could find no order delegating damages authority to the Bureau. In addition, USWC formally objects if the Bureau is deciding these cases under delegated authority because it contends that the Bureau has been performing investigative and prosecutorial functions in these proceedings and cannot, under Section 554(d) of the Administrative Procedure Act (5 U.S.C. § 554(d)), act as decision maker herein. USWC Br. at 2, n.7. While we agree with USWC that the damages issue must be decided by the Commission, 47 U.S.C. § 155(c)(1), the Bureau may deal with interlocutory matters such as discovery issues. We also disagree with USWC's characterization of the Bureau's activities regarding these complaint proceedings. The Bureau has at all times been acting as the "decision maker" and not as an "investigator" or "prosecutor."

[20] AT&T states that defendants' monitoring reports for the 1989-1990 monitoring period recite that Centel-IA earned a rate of return of 12.37% on interstate access services; Centel-MN earned a rate of return of 13.12% on interstate access services; Centel-NV earned a rate of return of 12.37% on interstate access services; Centel-NC earned a rate of return of 12.42% on interstate access services; Centel-TX earned a rate of return of 13.16% on interstate access services; TUECA earned a rate of return of 13.13% on interstate access services; USWC earned a rate of return of 12.75% on interstate access services; and EATEL earned a rate of return of 15.70% on interstate access services.

earned no more than 80 the maximum allowable rate of return, plus interest at the rate specified in CC Docket No. 84-800.

10. The defendants raise a number of issues that have been fully considered by the Commission in the *AT&T Liability Order* and the *AT&T Damages Order* (jointly "*AT&T Orders*") . They will be briefly discussed below.

11. Defendants advance a variety of arguments that AT&T has failed to state a cause of action under the Act.[21] Primarily, defendants argue that AT&T's claims are barred by *AT&T v. FCC*.[22] These arguments take several forms. Defendants contend that renaming a "refund" as a "damage award" does not cure the inconsistencies the court found with respect to the automatic refund rule and allow the awarding of damages in the instant complaints.[23] The defendants argue that the Commission must consider underearnings in determining whether particular overearnings are in violation of the Act,[24] nor may the Commission determine overearnings on an individual operating company basis, but, rather, must determine overearnings at the holding company level.[25] Defendants further argue that the Commission may only order refunds under Section 204 of the Act.[26]

12. Defendants also argue that the decision in *Ohio Bell*, issued after the release of the *AT&T Liability Order*, requires dismissal of AT&T's complaints. According to some defendants, *Ohio Bell* reaffirms the proposition established in *AT&T v. FCC* that the Commission cannot award damages for carrier overearnings without allowing the carrier to re-coup or off-set underearnings.[27] Defendants contend that these propositions are not confined to the Commission's ratemaking activities under Sections 204-205 of the Act[28] but are equally applicable when the Commission decides private complaints for damages under Section 208 of the Act.

13. Defendants also argue that the Commission is engaging in retroactive ratemaking should it order a carrier to make refunds solely because the carrier has exceeded the authorized rate of return.[29] Some defendants argue that rates charged in conformity with a lawfully filed tariff cannot be found to be unjust and unreasonable merely because they later proved to be too profitable.[30]

14. Each of the defendants argues that all of AT&T's claims are barred by Section 415 of the Act, which establishes a two-year statute of limitations on the filing of complaints.[31] According to the defendants, Section 415 bars the recovery of any damages if sought more than two years after the occurrence of any overearnings, in this case, thus barring all recovery sought for charges incurred before November 20, 1989.[32]

2. Discussion

15. We have carefully examined the record before us and conclude that the defendants have cited no facts and have made no arguments here that would warrant a ruling contrary to the *AT&T Orders*.

16. *Failure to State a Cause of Action:* In both the *AT&T Liability Order* and the *MCI Liability Order*, we rejected identical claims and held that *AT&T v. FCC* establishes no precedent that bars an individual complainant from seeking a remedy under Section 208 of the Act for damages based on a carrier's reported overearnings.[33] We stated that

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[21] The issues and arguments raised by defendants in response to AT&T's claims are identical in their essentials. For the sake of convenience and clarity, we will refer to defendants' arguments as if they are part of the same pleading. To the extent that individual defendants raise separate or unique arguments, we will address them separately.

[22] 836 F.2d 1386. The court invalidated the Commission's procedure to enforce its rate of return prescriptions through automatic refunds of carrier overearnings to customers. For a detailed discussion of *AT&T v. FCC*, *see AT&T Liability Order*, 5 FCC Rcd at 146-48. The U.S. Court of Appeals for the Sixth Circuit, relying on *AT&T v. FCC*, vacated a Commission order that authorized refunds of earnings in excess of the authorized rate of return for the special access category over a period of years in the context of a strategic pricing investigation. *See Ohio Bell v. FCC*, 949 F.2d 864 (6th Cir. 1991) (*Ohio Bell*). The court primarily relied upon the statement from *AT&T v. FCC* that a rate of return prescription is both a minimum and a maximum prescription. *See AT&T v. FCC*, 836 F.2d at 1390. The Commission has clarified, however, that it does not view a rate of return prescription as both a maximum and a minimum and has stated that

> [o]ur accumulated experience with rate of return prescriptions, and our review of the cost of capital evidence in this proceeding, convince us that there is no such point. * * * We believe there is a substantial gap between an earnings level that is fully adequate to assure attraction of capital on favorable terms, and an earnings level which, if sustained over time, would be confiscatory.

Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, 5 FCC Rcd 7507, 7532 (1990), *appeal docketed sub nom. Illinois Bell Tel. Co., et al. v. FCC*, No. 91-1020 (D.C. Cir. Jan. 11, 1991).

[23] *See, e.g.*, USWC Br. at 5-6.

[24] *See, e.g.*, Centel-IA Br. at 3-4.

[25] *See, e.g.*, Centel-MN Br. at 19-22.

[26] TUECA Br. at 2-5. TUECA argues specifically that the Commission may not order refunds here, but retains only its authority to order prospective relief under Section 205 of the Act. Similarly, the Centel companies argue that under *Illinois Bell Tel. Co. v. FCC*, 966 F.2d 1478 (D.C. Cir. 1991) (*Illinois Bell II*), the Commission may only order prospective relief under Section 205 of the Act unless the investigative and accounting requirements of Section 204(a) of the Act have not been met. *See, e.g.*, Centel-IA Br. at 12-13. *See also* EATEL Supplement to Motion to Dismiss.

[27] *See, e.g.*, Centel-IA Br. at 5-6.

[28] 47 U.S.C. §§ 204-205.

[29] *See, e.g.*, USWC Br. at 6-7. In addition, defendants contend that this retroactive adjustment of rates would violate the "filed rate doctrine," which requires carriers to charge tariffed rates. *See, e.g.*, Centel-NV Br. at 10; EATEL RBr. at 9.

[30] *See, e.g.*, Centel-TX Br. at 9.

[31] Section 415 provides, in pertinent part, that "[a]ll complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after...." 47 U.S.C. § 415(b). The term "overcharges" is defined in Section 415 "to mean charges for services in excess of those applicable thereto under the schedules of charges lawfully on file with the Commission." 47 U.S.C. § 415(g).

[32] *See, e.g.*, EATEL Answer at 11-12.

[33] *AT&T Liability Order*, 5 FCC Rcd at 147.

> we are not persuaded by defendants' claims that earning in excess of prescribed rate of return does not violate that Act or, if it does, that the Commission *is required* to take a carrier's underearnings as well as its overearnings into account in determining whether a violation has occurred.
>
> * * *
>
> We find that a valid prescription bound the defendants to a maximum earnings limitation, and the defendants admit that they earned in excess of the amount during the period in question.[34]

We found further that *AT&T v. FCC* did not pertain to Section 208 complaint proceedings. The Commission has the authority to order a carrier to pay damages if a complainant meets the burden of establishing both a violation of the Act and the actual injury.[35]

17. *Retroactive Ratemaking.* We held in the *AT&T Liability Order* that enforcement of a rate of return prescription is not retroactive ratemaking because the obligation being enforced was set prospectively when the prescription was adopted.[36] Defendants have not persuaded us to alter our decision. We have also rejected the contention that rates charged in conformity with a lawfully filed tariff cannot be unjust and unreasonable.[37] As we stated in the *AT&T Liability Order,* "legally effective, carrier-initiated tariffs can always be challenged as unreasonable and unlawful."[38] The issue raised by these complaints is not the lawfulness of high profits in the abstract, but the lawfulness of profits in excess of a prescription. Accordingly we hold that, taking into account the buffer, profits in excess of a prescription are unjust and unreasonable.

18. *AT&T v. FCC and Ohio Bell:* We disagree with the defendants' claim that *Ohio Bell* and *AT&T v. FCC* compel us to dismiss AT&T's complaints. As we emphasized in the *AT&T Liability Order* and reaffirmed in the *AT&T Damages Order,* automatic refunds and refunds ordered under Section 204 of the Act are different from individual actions for damages under Section 208. Unlike the automatic refund mechanism in *AT&T v. FCC* or the refund procedure in *Ohio Bell,* both of which resulted from rulemaking proceedings initiated at the Commission's discretion, individual actions for damages under Section 208 are initiated by private parties seeking damages for injuries to themselves; those private parties have the burden of establishing both a violation of the Act and actual injury.[39] The courts in *AT&T v. FCC* and *Ohio Bell* did not discuss private complaints for damages; they did not invalidate private actions for damages; and this analysis is not applicable to the different, separately authorized complaint procedure set forth in Sections 206-209. Accordingly, those decisions do not require us to depart from our holding in the *AT&T Liability Order* that defendants have violated the Communications Act by earning in excess of a valid rate of return prescription, thereby making their rates unjust and unreasonable under Section 201 of the Communications Act and themselves liable for damages to the extent a complainant can establish that it was damaged as a result of the violation.[40] We also reject defendants' claims that the decision in *Illinois Bell II* leaves the Commission with only Section 205 authority in the face of a violation of our rate of return prescription. As we explained in the *MCI Damages Order, Illinois Bell II* addresses the Commission's authority Under Section 204, not Section 208 of the Act.[41]

19. *Statute of Limitations.* AT&T is correct in its assertion that it had until two years after the filing of the defendants' monitoring reports within which to file its complaints.[42] We have previously held that the date of the filing of the final monitoring report is dispositive with regard to the date a complainant discovers the right or wrong or the facts on which such knowledge is chargeable as a matter of law.[43] Defendants have made no argument that persuades us to alter this holding. Section 415 does not bar AT&T's complaints.

B. Damages and Interest Claims

20. AT&T's damages claims rest primarily on the contention that the proper measure of damages it incurred as a result of the defendants' rate of return prescription violations is the difference between the amounts it actually paid the defendants for interstate access services during the January 1, 1989 through December 31, 1990 monitoring period and the amount it would have paid if the defendants' rates produced earnings that did not exceed the Commission's prescription. The defendants, however, have raised a number of challenges to AT&T's damages claims, including a number of arguments that were previously considered and rejected by the Commission in the *AT&T Orders.* We address the parties' contentions below.

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[34] *MCI Liability Order,* 5 FCC Rcd at 223 (emphasis in original).

[35] *AT&T Liability Order,* 5 FCC Rcd at 147, para. 43.

[36] *Id.* at 147, para. 41.

[37] *Id.* at 146-47, para. 36.

[38] *Id.* at 147, para. 36, quoting *Arizona Grocery v. Atchison, T.& S.F.R. Co.,* 284 U.S. 370, 384 (1932).

[39] *See AT&T Liability Order,* 5 FCC Rcd at 147, para. 43.

[40] *Id.* at 149, para. 60.

[41] *MCI Telecommunications Corporation v. Pacific Bell Telephone Company, et al.,* FCC 93-70 at para. 27 (released February 8, 1993) (*MCI Damages Order).*

[42] *See, e.g.,* AT&T Reply File No. E-92-10 at 11.

[43] In the *MCI Liability Order* we stated:

> the defendants filed the rate of return monitoring reports which... were developed by the Commission for several purposes, including making information about carrier earnings public[ly] available. Moreover, the monitoring reports relied on by MCI in its complaints were specifically designated by the Commission as a "final" and conclusively binding determination of a carrier's earnings.

5 FCC Rcd at 225. We note further that, we have held that Section 415(e) is inapplicable to the type of complaints we deal with here. Section 415(e) concerns a carrier's liability to its customers for failure to transmit a message in accordance with its common carrier obligations. The instant complaints deal with the lawfulness of defendants' rates, not defendants' transmissions or obligations to transmit messages properly. *See MCI Reconsideration Order,* 5 FCC Rcd at 3464.

1. Damages

a. Contentions of the Parties

21. As referenced above, AT&T's damages claims rest primarily on the contention that the proper measure of the damages it incurred as a result of defendants' violations is the difference between the amount it actually paid defendants for interstate access services during the January 1, 1989 through December 31, 1990 period and the amount it would have paid if the defendants' rates had produced earnings that did not exceed the Commission's prescribed rate of return.[44] In the *Discovery Order*, the Bureau stated that it tended to agree, in principle, that a possible measure of the damages stemming from defendants' rate of return violations could be that difference.[45] The Bureau was not persuaded on the record before it, however, that a damages determination based solely on such a measure necessarily reflected actual damages incurred by AT&T.[46] The defendants were invited to submit evidence that could serve to mitigate or otherwise reduce AT&T's damages claims. Specifically, the Bureau stated that evidence that would show that AT&T's share of excessive earnings realized by defendants could be offset or otherwise reduced due to facts and circumstances surrounding AT&T's purchase of defendants' interstate access services for the 1987-1988 monitoring period might be relevant.[47]

22. Under its damages approach, AT&T states that it should be awarded $26,000 from Centel-IA,[48] $263,000 from Centel-MN,[49] $201,000 from Centel-NV,[50] $75,000 from Centel-NC,[51] , $636,000 from Centel-TX,[52] $1,015,000 from TUECA,[53] $39,261,000 from USWC,[54] and $696,000 form EATEL,[55] exclusive of interest. According to AT&T, these amounts represent its contributions to the defendants' excessive earnings. In deriving these amounts, AT&T first calculated an estimate of what the defendants' net earnings would have been had they earned the maximum overall target rate of return plus buffer of 12.25%. AT&T then subtracted this amount from the defendants' actual net earnings as reported in the defendants' monitoring reports to determine the defendants' after-tax overearnings. The difference was then "grossed-up" to reflect tax adjustments and multiplied by AT&T's market share.[56] AT&T also claims interest calculated at the maximum allowable rate of return for the monitoring period.[57] In addition, AT&T contends it is entitled to interest on the damages amounts, from January 1, 1991 through August 30, 1992, of $4,900 from Centel-IA, of $49,300 from Centel-MN, of $37,700 from Centel-NV, of $14,100 from Centel-NC, of $119,300 from Centel-TX,[58] of $190,300 from TUECA,[59] of $7,362,000 from USWC,[60] and of $130,500 from EATEL.[61]

23. The defendants challenge AT&T's damages claims on a number of grounds, raising several arguments that were previously considered and rejected by the Commission in the *AT&T Liability Order* and the *AT&T Damages Order*. Defendants contend that by simply basing its damages claims on a calculation of AT&T's prorated share of overearnings, AT&T asks the Commission to award it damages in the same amounts it would have received under the automatic refund rule invalidated by the court in *AT&T v. FCC*.[62] The defendants maintain that such a result is expressly precluded by *AT&T v. FCC*.[63] TUECA maintains that because of *AT&T v. FCC* and *Ohio Bell* the Commission is without legal authority to award damages in the form of a refund.

24. Several defendants contend that, even if *AT&T v. FCC* and *Ohio Bell* do not preclude AT&T's damages claims, the claims still fail because AT&T's complaints do not establish a valid cause of action. According to defendants, to pursue a damages claim, AT&T must first show that the defendants charged unjust and unreasonable rates for interstate access services during the period in question, not that defendants' rates produced excessive returns for overall interstate access.[64] The Centel companies and USWC further contend that AT&T must specify an identifiable rate that AT&T paid that was too high or too low.[65] Moreover, defendants argue, Section 206 of the Act[66] requires AT&T to prove injury, causation, and the amount of damages in addition to establishing a violation of the Act.[67] Defendants maintain that by simply referencing defendants' earned rates of return for overall interstate access, AT&T has not only failed to allege any facts that would establish that defendants' rates were unjust and unreasonable during the period in question but has also failed to show that it sustained actual damage as a result of those rates.[68]

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[44] AT&T Br.2 at 2-3.

[45] *Discovery Order*, 7 FCC Rcd at 4933, para. 7.

[46] *Id.*

[47] *Id.*

[48] AT&T Br. File No. E-92-07 at 1.

[49] AT&T Br. File No. E-92-08 at 1.

[50] AT&T Br. File No. E-92-09 at 1.

[51] AT&T Br. File No. E-92-10 at 1.

[52] AT&T Br. File No. E-92-11 at 1.

[53] AT&T Br. File No. E-92-12 at 1.

[54] AT&T Br. File No. E-92-14 at 1.

[55] AT&T Br. File No. E-92-16 at 1.

[56] *See, e.g.*, AT&T Br. File No. 92-07 at Exhibit A.

[57] *See, e.g.*, AT&T Br. File No. E-92-12 at 7.

[58] AT&T Br. File Nos. E-92-07 through E-92-11.

[59] AT&T Br. File No. E-92-12.

[60] AT&T Br. File No. E-92-14.

[61] AT&T Br. File No. E-92-16.

[62] *See, e.g.*, EATEL RBr. at 1-4.

[63] For example, EATEL contends that the AT&T methodology mirrors the automatic refund rule invalidated in *AT&T v. FCC*, and thus, argues that any resulting damages claimed are an impermissible refund under *AT&T v. FCC*. *See id.* at 1-2.

[64] *See, e.g.*, Centel-NC Br. at 15.

[65] Centel-MN at 17; USWC Br. at 7-8. In addition, USWC cites to a 1970 circuit court decision to support its claim that where retroactive relief is ordered for rates paid pursuant to a tariff that is subsequently found unjust and unreasonable, the Commission must determine what a just and reasonable rate is. *Id.*, citing to *Middlewest Motor Freight Bureau v. United States*, 433 F.2d 212, 232 (8th Cir. 1970) (*Middlewest*), *cert. denied*, 402 U.S. 999 (1971). As we determined in the *AT&T Damages Order*, USWC's reliance on *Middlewest* is misplaced. *AT&T Damages Order* at n.44.

[66] 47 U.S.C. § 206.

[67] *See, e.g.*, Centel-NV Br. at 17.

[68] *See, e.g.*, Centel-MN Br. at 17; USWC Br. at 9. The parties cite to *Aeronautical Radio, Inc. v. FCC*, 642 F.2d 1221, 1235 n.34 (D.C. Cir. 1980), *cert. denied*, 451 U.S. 920 (1981) (*ARINC*) and *Southern Ry. Co. v. Seaboard Allied Milling Corp.*, 442 U.S. 444, 455 (1979), *reh'g denied*, 444 U.S. 890 (1979) (*Seaboard*), for this proposition. The defendants' reliance on these two cases is misplaced. In *Seaboard*, the Court addressed the narrow question of whether there must be judicial review of the Interstate

25. The majority of defendants argue that an award of damages to AT&T based on carrier overearnings is inappropriate for equitable and policy reasons.[69] USWC vigorously argues that AT&T is actually seeking restitution or a refund of tariffed charges, not damages. USWC argues that regardless of how AT&T characterizes the relief it seeks, any form of refund or restitution to AT&T would be contrary to the public interest.[70] USWC further contends that an award of damages would be inequitable because (i) USWC's rate of return for the 1989-1990 period was improperly calculated by the Commission; (ii) AT&T would receive a windfall that would be inconsistent with sound equitable principles; and (iii) irrespective of USWC's Form 492 report, the issue of refunds for overearnings for the 1989-1990 period is still unresolved by the Commission.[71]

26. The Centel companies argue that AT&T's damages claims must fail because the Commission is required to deny damages in cases, such as the instant case, where an award would not serve equity or the public interest.[72] In addition, the Centel companies argue that the relevant rate of return for purposes of assessing any damage to AT&T is that of the affiliated Centel companies in the aggregate, which fell below the prescribed maximum, not the rate of return of the individual Centel companies. The Centel

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Commerce Commission's (ICC) decision not to conduct a Section 15(8)(a) investigation of a tariff. The Court held that judicial review was inappropriate because the shippers could pursue individual complaints under Section 13(1) of the Interstate Commerce Act and the decision not to investigate under Section 15(8)(a) did not prejudge the lawfulness of the tariff. As the Court noted, the ICC's decision not to investigate had only two consequences -- the burden to establish reasonableness is shifted from the carrier to the shipper and the shipper might not be entitled to the full amount of the overcharge because it must prove actual damages. *Seaboard*, however, does not stand for the proposition that refunds for overcharges and an award of damages are always necessarily two different amounts. In fact, the Court acknowledged that these amounts may be identical. *See* 442 U.S. 444, 455, n.8.

The U.S. Court of Appeals decision in *ARINC* similarly dealt with the reviewability of a Commission decision to accept a tariff. The court held that such action by the Commission is unreviewable since parties claiming to be aggrieved by the Commission's acceptance of a tariff may avail themselves of the statutory complaint procedure in Section 208 of the Act. The court echoed the Supreme Court's ruling in *Seaboard* that the burden is on the complainant in an individual complaint action, and the amount of damages may not necessarily be the same as the amount received had the Commission investigated the tariff, found the rates to be unreasonable, and ordered refunds.

[69] For example, TUECA contends that before the Commission determines whether TUECA's rates were unjust and unreasonable, the Commission would have to consider the specific circumstances faced by TUECA's members as rural common carriers. While such considerations may play a part in the Commission's broad ratemaking proceedings, TUECA has not persuaded us that it is entitled to special treatment in these Section 208 complaint proceedings. In the instant case TUECA will be subject to the same standards and afforded the same consideration as all parties in Section 208 complaints proceedings.

In addition, TUECA claims that its rate of return may, in fact, be below that authorized by the Commission because the carrier common line pool returns for the 1990 portion of the monitoring period have not been finalized by the National Exchange Carriers Association. TUECA Br. at 6. AT&T responds that all adjustments should have been included in TUECA's final monitoring report pursuant to Section 65.600(b) of the Commission's rules, 47 C.F.R. § 65.600(b). In addition, AT&T argues that, if any net adjustments to TUECA's investment or earnings occurs subsequent to the filing of the final report, TUECA can apply to the Commission for permission to have any such adjustment included as an "out-of-period adjustment" in the period in which the adjustment is discovered. AT&T RBr. File No. E-92-12 at 6, citing to Mountain States Telephone and Telegraph Co., *et al.*, 2 FCC Rcd 6999, 7000 (Com. Car. Bur. 1987). AT&T further argues that TUECA has not filed for such an adjustment or shown that an adjustment is warranted or appropriate. *Id.* at 6-7. We find that TUECA's attempt to modify its final monitoring report here is without merit. We have previously stated that

> [W]e established a nine-month limit after the close of the enforcement period for carriers to make final adjustments to their enforcement period reports for out-of-period items. ... The nine-month cut-off was established to accommodate the concerns of the industry and still have a biennial enforcement report useful for refund purposes in the subsequent enforcement period. ... Because the bulk of the adjustments are normally identified in the first few months after the [final] quarter ends, we believed then and still believe this process is a satisfactory compromise and will capture virtually all of the adjustments. We also indicated that we would be willing to address waiver requests should extraordinary circumstances warrant different accounting treatment in individual cases.

Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements, CC Docket No. 86-127, Memorandum Opinion and Order, 2 FCC Rcd 5340, para. 6 (1987). In cases where an out-of-period adjustment identified after the cut-off date would raise a carrier's rate of return above the maximum allowable, we decided to determine the appropriate treatment on a case-by-case basis. *Id.* at para. 10. For carriers with overearnings, we stated that "we should be able to identify the extremely late and significantly large out-of-period adjustments in the tariff review process." *Id.* We find that the same reasoning applies to any adjustments a carrier might seek in the context of damages awards in Section 208 complaint proceedings. Accordingly, TUECA's attempt to alter its final monitoring report well past the end of the nine-month cut-off is unavailing.

[70] USWC Br. at 10-17. USWC argues AT&T must plead its case in equity and the Commission may only award a refund/damages if we find that the public interest will be served by a refund/damages award to AT&T. USWC contends that the leading case in this area is *Moss v. Civil Aeronautics Board*, 521 F.2d 298 (D.C. Cir. 1975) (*Moss*), *cert. denied sub nom. Roberts v. Civil Aeronautics Board*, 424 U.S. 966 (1976), *reh'g denied*, 425 U.S. 966 (1976). USWC states that the refund in *Moss* "was governed by the equitable principles governing the law of restitution." USWC Br. at 14, citing to *Moss*, 521 F.2d at 304. We addressed this argument in the *AT&T Damages Order* and found USWC's reliance on *Moss* to be misplaced. *AT&T Damages Order* at n.49.

[71] USWC Br. at 14-17.

[72] Centel-NC RBr. at 11.

companies also argue that any award of damages to AT&T here would be a windfall to AT&T and not benefit the public in any way.[73]

27. For their part, defendants TUECA and EATEL contend that AT&T has no valid claim for damages because AT&T has suffered no injury as a result of passing on the costs of interstate access to its customers.[74]

28. AT&T counters that defendants' threshold arguments regarding the effect of the court's ruling in *AT&T v. FCC* and *Ohio Bell* are inapposite and have largely been rejected or precluded by the *AT&T Liability Order*.[75]

29. AT&T adds that defendants' arguments that it has failed to allege and prove violations of the Act and actual damage are unfounded because it has made a sufficient showing of each under traditional principles governing its statutory right to such relief.[76] According to AT&T, the only injury and causation it need show are the injury and causation arising from its payment of excessive rates for services it purchased from defendants during the relevant period.[77] AT&T maintains that it has shown that defendants charged rates that produced earnings in excess of the Commission's prescribed rate of return and argues that its damages are the excessive charges that AT&T paid. AT&T argues that its measure of damages is correct and that it has been damaged regardless of whether or not it may have been able to "pass on" the damages to other parties.[78] Moreover, AT&T claims that the burden is on defendants to show that the full overcharges should not be recovered as damages and that they have failed to meet this burden.[79]

b. Discussion

30. *AT&T v. FCC and Ohio Bell:* The defendants' claims that the holdings in *AT&T v. FCC* and *Ohio Bell* control these proceedings and bar an award of damages to AT&T are without merit for the reasons stated in the *AT&T Liability and Damages Orders*. We emphasized in those orders that the court in *AT&T v. FCC* explicitly acknowledged this Commission's authority to order a carrier to disgorge earnings in excess of a rate of return prescription,[80] finding only the remedy component of the Commission's rate of return prescription (the automatic refund mechanism) to be unlawful.[81] More to the point, we emphasized that "the [*AT&T v. FCC*] opinion does not address Section 208 complaint proceedings nor purport to alter the statutory scheme of the Act or the remedies Congress established therein."[82] Similarly, as we stated in the *AT&T Damages Order*, the *Ohio Bell* decision does not expand upon *AT&T v. FCC* and does not address this Commission's authority to award damages in private complaint actions under Section 208 of the Act.[83]

31. *Section 201(b) of the Act:* We turn now to the defendants' contention that AT&T's damages claims must be dismissed because AT&T has failed to prove 80 defendants' rates were unjust and unreasonable within the meaning of Section 201(b) of the Act. In the liability section above, we held that the complainant met its burden of proof by establishing that the defendants violated our rate of return prescription.[84] Accordingly, the question before us now is not whether defendants' rates were unjust and unreasonable; rather the question now is whether the complainant suffered any measurable damage as a consequence of paying rates previously determined by the Commission to be unlawful under Section 201(b).

32. *Damages and Offsets:* The defendants' arguments are devoted primarily to attempting to persuade the Commission that AT&T's damages claims are really claims for restitution or refunds governed by equitable or public policy considerations. These considerations, according to defendants, militate against any award of damages to AT&T based on excessive earnings. The defendants argue, in effect, that the damages AT&T seeks are equivalent to refunds that would have been required under the refund mechanism invalidated by the court in *AT&T v. FCC*. We do not agree. We are concerned here with determining whether a particular customer, which has availed itself of a statutory complaint remedy under Title II of the Act, has sustained any measurable damage that can be traced to defendants' violations of the Act. Although a damages award under Section 208 of the Act might well be equal or substantially similar to a refund ordered under Section 204 of the Act,[85] this does not transform a private complaint action into a public enforcement proceeding subject to broad public interest considerations.

33. We have previously rejected arguments that we must balance the excessive earnings of a particular telephone company against the underearnings of affiliated companies in the context of a complaint for damages for the particular company's violation of a rate of return prescription.[86] The Centel companies have presented no new evidence or arguments that would warrant a different conclusion here.

34. As in the *AT&T Damages Order*, we find defendants' arguments with respect to "passing-on" equally unavailing. In rejecting this same argument, we said, "[w]hether [complainant] passed on the overcharges or absorbed them does

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[73] Centel-NC RBr. at 11-12.

[74] EATEL RBR. at 4 and n.1; TUECA Br. at 8.

[75] *See, e.g.*, AT&T RBr. File No. E-92-12 at 3-5.

[76] AT&T RBr. File No. E-92-14 at 2-3, 6-7.

[77] *See, e.g.*, AT&T RBr. File No. E-92-14 at 6-7; AT&T RBr. File No. E-92-12 at 2.

[78] AT&T RBr. File No. E-92-16 at 2-4.

[79] *See, e.g.*, AT&T Br. File No. E-92-07 at 5.

[80] *AT&T v. FCC*, 836 F.2d at 1392 ("Thus, as we previously have concluded, the Commission has authority under the Act to order refunds where a carrier has violated an outstanding rate of return prescription.").

[81] Indeed, the court in *Ohio Bell* recognized the continuing efficacy of our rate of return framework. *See* 949 F.2d at 868.

[82] *AT&T Liability Order*, 5 FCC Rcd at 148, para. 49.

[83] *AT&T Damages Order* at para. 19.

[84] In the *AT&T Liability Order*, we held that the complainant therein proved that defendants' rates were unjust and unreasonable by proving that the defendants violated our rate of return prescription. *See AT&T Liability Order*, 5 FCC Rcd at 149.

[85] *See Seaboard*, 442 U.S. 444, 455, n.8:

> If a shipper proves a rate is unreasonable and that he was damaged in the full amount he was overcharged, the outcome of a § 13(1) [§ 208] proceeding will be no different than that of a § 15(8)(a) [§ 204] proceeding in which the carrier fails to establish the reasonableness of the rate.

[86] *AT&T Damages Order* at para. 23, citing to *AT&T Liability Order*, 5 FCC Rcd at 148, para. 47.

not alter the fact that [complainant] was damaged by paying excessive rates charged by [defendants]."[87] The issue is not what AT&T has done in response to paying excessive rates, but whether AT&T has been damaged as a result of these excessive rates.

35. After carefully considering the arguments and evidence presented by the parties, we find that AT&T has made a persuasive showing that it its entitled to recover the excessive amounts it paid for defendants' overall interstate access services. Accordingly, with respect to the Centel companies, we award damages to AT&T from Central Telephone Company - Iowa in the amount of $22,900; from Central Telephone Company - Minnesota in the amount of $226,500; from Central Telephone Company - Nevada in the amount of $182,900; from Central Telephone Company - North Carolina in the amount of $66,200; and from Central Telephone Company of Texas in the amount of $563,500. In reaching this amount, we accept the damages calculations offered by the Centel companies. In its calculations of damages, AT&T used purchase data provided by defendants in responses to complainant's interrogatories on March 23, 1992. In contrast, the Centel companies used data provided by AT&T purporting to show the amount or extent of AT&T's purchases from the Centel companies during the period in question. The information was submitted in AT&T's opposition to defendants' motions to compel filed on September 28, 1992. Prior to filing its final briefs in these proceedings, AT&T did not challenge the purchase amounts used by defendants in their computations of damages by proffering supplementary evidence to contradict defendants' purchase data. Moreover, in the absence of reliable information that would support AT&T's claims regarding its purchases, AT&T's statement with regard to its purchases during the monitoring period set forth in its September 28, 1992 opposition to defendants' motions to compel may properly be viewed as an admission.

36. With respect to East Ascension Telephone Company, we award damages to AT&T in the amount of $696,000. We accept AT&T's calculations of damages and note that EATEL does not offer an alternative damages calculation. EATEL does not directly challenge AT&T's computation methodology or calculations.

37. As for the Telephone Utilities Exchange Carrier Association and its member companies, we award damages to AT&T in the amount of $1,015,000. We accept AT&T's calculations of damages and note that TUECA does not offer an alternative damages calculation. TUECA does not challenge AT&T's computation methodology, calculations, or damages amount.[88]

38. Finally, we award damages to AT&T from Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Telephone Company in the total amount of $39,261,000. In reaching this amount, we accept the damages computations provided by AT&T, which set out the difference between the amount AT&T paid for defendants' services and the amount it would have paid if defendants' rates had produced earnings at the prescribed rate of return.[89] The information used by AT&T to compute its damages was taken from the USWC's responses to AT&T's interrogatories in which USWC set forth AT&T's share of USWC's excessive earnings. USWC, nevertheless, argues that the calculations are incorrect because they are based on the wrong Form 492 filed by USWC. USWC contends that AT&T, in calculating damages, should use the amounts reported in its alternate Form 492, which reflect USWC's understanding of the court's decisions in *Illinois Bell I*,[90] and *Mountain States Tel. and Tel. Co. v. FCC*.[91] USWC has not provided any persuasive evidence or arguments that the earnings levels in its initial Form 492 should be adjusted based on its purported understanding of the court's decisions in *Illinois Bell I* and *Mountain States*. Forms 492 should be filed in conformance with the Commission's rules, not in conformance with a carrier's understanding of issues that have been remanded to the Commission for further action as in *Illinois Bell I* and *Mountain States*. In the absence of evidence that would allow us to make a determination that the initial Form 492 should be adjusted to the extent claimed by USWC, we cannot accept USWC's claims.[92] Therefore, we find that AT&T properly based its damages claims on the initial Form 492 filed by USWC with the Commission.

2. Interest on Damages

a. Contentions of the Parties

39. Defendants' final claim is that AT&T is not entitled to prejudgment interest because such relief is not explicitly referred to or contemplated in Sections 206-209 of the Act. According to defendants, the Commission may award AT&T interest only if it is ordering a refund under Section 204 of the Act. Defendants argues that because the Commission cannot lawfully grant AT&T a refund under the facts of the instant case, no interest can be awarded on AT&T's damages.[93]

40. AT&T argues in reply that, contrary to defendant's assertion, the Commission's authority to award interest in a complaint proceeding is well established. AT&T contends that interest in the instant case is fully appropriate because the Commission, in prescribing a maximum permitted rate of return for the LECs, explicitly contemplated that the LEC's overearnings would be subject to interest.[94] In fact, AT&T states, the Commission prescribed the interest rate computation to be applied to excessive earnings.[95]

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[87] *AT&T Damages Order* at para. 23.

[88] *See* AT&T RBr. at 2, n.3.

[89] *See* AT&T RBr. File No. E-92-14 at Exhibit A.

[90] *See* n.17, *supra*.

[91] 939 F.2d 1035 (D.C. Cir. 1991) (*Mountain States*).

[92] We note that the Commission has provided mechanisms to deal with out-of period adjustments to rates of return. *See* n.69, *supra*. Should the Commission adopt requirements that would retroactively alter USWC's or any carrier's rate of return for the 1989-1990 monitoring period, the out-of-period adjustment will either be dealt with on a case-by-case basis or in the tariff review process. *Id.*

[93] *See, e.g.*, EATEL RBr. at 4-9; Centel-TX RBr. at 13-15.

[94] *See, e.g.*, AT&T RBr. File No. E-92-11 at 13.

[95] *Id.* AT&T concedes, however, that should the Commission decide that interest calculated at the rate-of-return percentages is no longer appropriate, "the Commission could look to other reasonable rates such as the IRS rates." *See, e.g.*, AT&T Br. File No. E-92-12 at n.12.

b. Discussion

41. The defendants have made no argument which persuades us to alter our holding in the *AT&T Damages Order* that the Commission has the authority to order interest in a Section 208 proceedings.[96] We conclude that interest is appropriate in the instant case. AT&T was effectively deprived of the use of the excessive amounts it paid defendants as a result of defendants' unlawful rates while defendants, on the other hand, enjoyed the beneficial use for a substantial period of time of funds to which AT&T rightfully has a claim. We are persuaded that interest is required not only to effect a full and fair remedy for AT&T, which paid rates higher than it would have paid had defendant earned within the prescribed level, but also to avoid any unjust enrichment of defendants stemming from their charging rates that we have determined to be unjust and unreasonable under Section 201(b) of the Act.[97] AT&T is wrong, however, in claiming that an award of interest necessarily flows from our decisions in the CC Docket No. 84-800 proceeding,[98] and therefore, should be computed at the rate specified in those proceedings. Just as the courts' decisions regarding the validity of the rate of return mechanism and refunds under Section 204 of the Act do not guide us in this Section 208 proceeding, we are similarly not bound by interest rate computations prescribed in CC Docket No. 84-800. We conclude that interest should be computed at the IRS rate for tax refunds and not at the rate AT&T requests.[99] In addition, we find that interest should begin to accrue from January 1, 1991, the day after the end of the 1989-1990 monitoring period. At that point, defendants were subject to the earnings limitations of a new monitoring period. Accordingly, we award interest calculated at the IRS rate for tax refunds to AT&T from January 1, 1991 until the date of full payment to AT&T.

IV. CONCLUSION

42. We have carefully reviewed the extensive record before us and have found, to the extent indicated herein, that complainant is entitled to an award of damages, plus accumulated interest on such damages amount, for defendants' violations of our rate of return prescription for the 1989-1990 monitoring period.

V. ORDERING CLAUSES

43. Accordingly, IT IS ORDERED, pursuant to Section 4(i), 4(j), 201, 206, 207, 208 and 209 of the Communications Act, as amended, 47 U.S.C. §§ 4(i), 4(j), 201, 206, 207, 208 and 209, that the above-captioned complaints filed by American Telephone and Telegraph Company ARE GRANTED to the extent discussed herein.

44. IT IS FURTHER ORDERED that Central Telephone Company - Iowa SHALL PAY to American Telephone and Telegraph Company the sum of $22,900 (Twenty-two thousand nine hundred dollars) within 60 days after the release of this Memorandum Opinion and Order; that Central Telephone Company - Minnesota SHALL PAY to American Telephone and Telegraph Company the sum of $226,500 (Two hundred twenty-six thousand five hundred dollars) within 60 days after the release of this Memorandum Opinion and Order; that Central Telephone Company - Nevada SHALL PAY to American Telephone and Telegraph Company the sum of $182,900 (One hundred eighty-two thousand nine hundred dollars) within 60 days after the release of this Memorandum Opinion and Order; that Central Telephone Company - North Carolina SHALL PAY to American Telephone and Telegraph Company the sum of $66,200 (Sixty-six thousand two hundred dollars) within 60 days after the release of this Memorandum Opinion and Order; that Central Telephone Company of Texas SHALL PAY to American Telephone and Telegraph Company the sum of $563,500 (Five hundred sixty-three thousand five hundred dollars) within 60 days after the release of this Memorandum Opinion and Order; that the Telephone Utilities Exchange Carrier Association and its member companies SHALL PAY to American Telephone and Telegraph Company the sum of $1,015,000 (One million fifteen thousand dollars) within 60 days after the release of this Memorandum Opinion and Order; that The Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company SHALL PAY to American Telephone and Telegraph Company the sum of $39,261,000 (Thirty-nine million two hundred sixty-one thousand dollars) within 60 days after the release date of this Memorandum Opinion and Order; and that East Ascension Telephone Company SHALL PAY to American Telephone and Telegraph Company the sum of $696,000 (Six hundred ninety-six thousand dollars) within 60 days after the release of this Memorandum Opinion and Order.

45. IT IS FURTHER ORDERED that Central Telephone Company - Iowa, Central Telephone Company - Minnesota, Central Telephone Company - Nevada, Central

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[96] *AT&T Damages Order* at para. 28.

[97] *See New England Telephone and Telegraph Co. v. FCC*, 826 F.2d 1101, 1113 (D.C. Cir. 1987), *cert. denied*, 109 S. Ct. 1942 (1989) (carriers may reasonably be required "to pay full interest for earnings they had no right to retain in the first place.").

[98] Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800, Phase I, FCC 85-527 (released Sept. 30, 1985), 50 Fed. Reg. 41,350 (Oct. 10, 1985) (*Phase I Order*), *on reconsideration*, Memorandum Opinion and Order, FCC 86-114 (released March 24, 1986), 51 Fed. Reg. 11,033 (Apr. 1, 1986) (*Phase I Reconsideration*), *on further reconsideration*, 2 FCC Rcd 190 (1987).

[99] We believe that the rationale adopted by the Commission for applying the IRS rate in pole attachment complaint proceedings under Section 204 of the Act, 47 U.S.C. § 204, is equally applicable here. In Teleprompter of Fairmont v. C&P of West Virginia, 79 FCC 2d 232 (1980), the Commission stated

> As a matter of fairness, we believe that the rate of interest applied in a pole attachment complaint proceeding should be readily available, easily applied, and periodically revised to reflect changes in borrowing costs. In light of these considerations, we find the interest rate for federal tax refunds and additional tax payments suitable for use in this type of proceeding. This rate appears in a variety of easily obtained official and commercial publications, and is revised on a regular basis.

79 FCC 2d at 238 [footnote omitted].

The applicable IRS rates are set forth in Appendix A.

Telephone Company - North Carolina, Central Telephone Company of Texas, Telephone Utilities Exchange Carrier Association and its member companies, The Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company, and East Ascension Telephone Company SHALL PAY interest on the amount of damages awarded here at the IRS rates set forth in Appendix A from January 1, 1991 until the date full payment is made.

46. IT IS FURTHER ORDERED that the Motion for Acceptance of Late-Filed Pleading filed by East Ascension Telephone Company on February 18, 1992 and that the Motion for Acceptance of Supplement filed by East Ascension Telephone Company on July 2, 1992 ARE GRANTED.

47. IT IS FURTHER ORDERED, that the Motion to Dismiss filed by Telephone Utilities Exchange Carrier Association on January 6, 1992, that the Motion to Dismiss filed by USWC on January 17, 1992, that the Motion to Dismiss filed by East Ascension Telephone Company on January 17, 1992, and that the Motion to Compel Answers to EATEL's 2nd Set of Interrogatories filed by East Ascension Telephone Company on September 18, 1992 ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Effective Period	Rate	Internal Revenue Service Citation
01/01/87 - 03/31/87	8%	Rev.Rul. 146, 1986-2 C.B. 208
04/01/87 - 06/30/87	8%	Rev.Rul. 87-23, 1987-13 I.R.B. 46
07/01/87 - 09/30/87	8%	Rev.Rul. 87-62, 1987-29 I.R.B. 10
10/01/87 - 12/31/87	9%	Rev.Rul. 87-87, 1987-36 I.R.B. 8
01/01/88 - 03/31/88	10%	Rev.Rul. 87-131, 1987-50 I.R.B. 6
04/01/88 - 06/30/88	9%	Rev.Rul. 88-17, 1988-10 I.R.B. 6
07/01/88 - 09/30/88	9%	Rev.Rul. 88-50, 1988-25 I.R.B. 39
10/01/88 - 12/31/88	10%	Rev.Rul. 88-86, 1988-41 I.R.B. 1
01/01/89 - 03/31/89	10%	Rev.Rul. 88-105, 1988-51 I.R.B. 4
04/01/89 - 06/30/89	11%	Rev.Rul. 89-36, 1989-1 C.B. 309
07/01/89 - 09/30/89	11%	Rev.Rul. 89-69, 1989-1 C.B. 310
10/01/89 - 12/31/89	10%	Rev.Rul. 89-99, 1989-2 C.B. 256
01/01/90 - 03/31/90	10%	Rev.Rul. 89-125, 1989-2 C.B. 257
04/01/90 - 06/30/90	10%	Rev.Rul. 90-19, 1990-1 C.B. 186
07/01/90 - 09/30/90	10%	Rev.Rul. 90-47, 1990-1 C.B. 187
10/01/90 - 12/31/90	10%	Rev.Rul. 90-71, 1990-35 I.R.B. 4
01/01/91 - 03/31/91	10%	Rev.Rul. 90-94, 1990-46 I.R.B. 16
04/01/91 - 06/30/91	9%	Rev.Rul. 91-20, 1991-11 I.R.B. 1
07/01/91 - 09/30/91	9%	Rev.Rul. 91-33, 1991-21 I.R.B. 1
10/01/91 - 12/31/91	9%	Rev.Rul. 91-50, 1991-37 I.R.B. 1
01/01/92 - 03/31/92	8%	Rev.Rul. 91-65, 1991-51 I.R.B. 1
04/01/92 - 06/30/92	7%	Rev.Rul. 92-21, 1992-14 I.R.B. 14
07/01/92 - 09/30/92	7%	Rev.Rul. 92-44, 1992-24 I.R.B. 86
10/01/92 - 12/31/92	6%	Rev.Rul. 92-77, 1992-38 I.R.B. 12

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of:

The State of Oregon Acting By and Through The State Board of Higher Education — File No. BPED-900129MH

For a Construction Permit
for a New Educational FM Station on
Channel 205C1
in Redding, California

MEMORANDUM OPINION AND ORDER

Adopted: May 10, 1993; Released: May 18, 1993

By the Commission:

1. The Commission has before it an Application for Review filed on August 13, 1990 by The State of Oregon Acting By and Through The State Board of Higher Education ("Oregon") and related pleadings.[1] Oregon seeks reconsideration of the June 21, 1990 action of the Chief, Audio Services Division, Mass Media Bureau ("Bureau") returning Oregon's application as untimely filed pursuant to 47 C.F.R. § 73.3573(e).

2. By way of background, on June 10, 1988, Foundation filed an application for a new noncommercial educational station on Channel 205C1 in Redding, California (BPED-880610ML). On December 6, 1989, Foundation's application appeared on a Commission *Public Notice*, Report A-186, entitled "Non-Commercial Educational FM Broadcast Applications Accepted for Filing and Notification of Cut-Off Date," which specified January 10, 1990 as the date by which any application seeking to be considered mutually exclusive with Foundation's application was to be filed.[2] Through an inadvertent staff error, Foundation's application also appeared on a subsequent "A" cut-off list, released December 28, 1989, Report A-188, which specified a cut-off date of February 1, 1990. On January 12, 1990, the FM Branch released an *erratum* which notified the public that the Foundation application had been inadvertently listed on the "A" cut-off list released December 28, 1989, Report A-188, and deleted the application therefrom. On January 29, 1990, in response to the second, erroneous "A" cut-off list, Oregon filed its mutually exclusive application for a new noncommercial, educational FM station for Redding, California on Channel 205C1. Oregon sought a waiver of 47 C.F.R. §§ 1.227(b)(1), 73.3564(c), and 73.3573(d) (currently Section 73.3573(e)) requesting acceptance of its late-filed application and consolidation with the Foundation application.

3. Oregon's waiver request was predicated on its belief that the first "A" cut-off list had been issued in error and the date established in the second notice superseded the date established in the first. To substantiate this assumption, Oregon claims that it reasonably relied upon a November 29, 1989 staff deficiency letter addressed to Foundation, advising that further action on Foundation's application would be withheld for thirty days pending receipt of the technical information requested in the letter. Oregon argues that it thus assumed the Commission was precluded from placing Foundation's application on a cut-off list during the pendency of this thirty day period. Oregon states that its assumption that the December 6, 1989 cut-off list had been issued erroneously appeared to be confirmed three weeks later when, on December 28, 1989, the Commission placed Foundation's application on the second cut-off list. Secondly, Oregon contends that the Commission's data base, the Facility/Application Information Report ("FAIR Report"), listed Foundation's application as accepted for filing on December 28, 1989 and subject to the February 1, 1990 cut-off date - the dates reflected in the second "A" cut-off list. Furthermore, Oregon adds, the January 12, 1990 *erratum* failed to indicate whether the Commission was reinstating, as effective, the January 10, 1990 cut-off date. Recognizing that the Commission strictly enforces its cut-off rules, Oregon maintained that where compelling circumstances exist, the Commission has oftentimes waived these rules. Oregon claimed that the diligent preparation of its application, coupled with the publication of an erroneous "A" cut-off list, constituted unusual and compelling circumstances justifying waiver of the cut-off rules and acceptance of its application.

4. In denying Oregon's request for waiver, the Bureau emphasized that the Commission's cut-off rule will be waived only for the most unusual and compelling reasons. *See e.g. United Public Broadcasting Co., Inc.*, 57 RR 2d 1605, 1606 (1985); *RKO General, Inc.* (WNAC-TV), 89 FCC 2d 297, 321 (1982). The Bureau concluded that Oregon had failed to exercise reasonable diligence in the preparation and filing of its application, that the tardy filing was not attributable to circumstances beyond its control, and thus held that Oregon had failed to make the requisite showing for a waiver of the cut-off rule. The Bureau also concluded that Oregon's reliance on the substance of the November 29, 1989 letter to Foundation as reason for disregarding the January 10, 1990 cut-off date was misplaced. This request for information, the Bureau noted, pertained only to minor technical deficiencies, and as such, did not preclude Foundation's application from being considered acceptable for filing and placed on a cut-off list. The Bureau also rejected the argument that

[1] On August 28, 1990, The University Foundation, California State University, Chico ("Foundation") filed an Opposition to Oregon's Application for Review.

[2] Under the cut-off procedure, applications accepted for filing are placed on an "A" cut-off public notice which provides a thirty-day period for the filing of applications that are directly in conflict with those listed. This procedure is designed to permit the Commission to cease accepting applications from new parties so that a choice can be made between timely filed applicants. After any such competing applications are filed, these applications are placed on a "B" cut-off public notice which provides for a 30-day period for the filing of petitions to deny. *See* 47 C.F.R. § 73.3573(e).

Oregon's confusion was compounded by the February 1, 1990 cut-off date listed in the FAIR Report, as Section 0.434(e) of the Commission's Rules specifically informs applicants that the Commission's FAIR Report data base is an unofficial, secondary source, and that "[a]ction by the public such as the filing of applications, should be based on the primary sources of information [public notices] and not on the data bases or lists." Finally, in denying Oregon's request to file in response to the second, erroneous "A" cut-off list, the staff reiterated Commission precedent, established in *The Florida Institute of Technology, Inc.*, 4 FCC Rcd 1549 (1989), *aff'd* 952 F.2d 549 (D.C. Cir. 1992), (*"Florida Institute"*) that where an erroneous "A" cut-off list is released, the Commission will not accept an application filed in response to the later, erroneous, list. The Bureau therefore returned Oregon's application as untimely filed, concluding that it should have been filed by the January 10, 1990 cut-off date, and that Oregon had failed to justify a waiver of the cut-off rule.

5. In its Application For Review, Oregon claims that the return of its application was arbitrary and capricious, that the action constituted prejudicial procedural error, and that it ultimately denied Oregon due process of law. Oregon contends that the confusion engendered by issuing two public notices containing conflicting cut-off dates is functionally equivalent to inadequate notice. Oregon further asserts that the Commission's failure to issue a cut-off list with one date certain was tantamount to the Commission's failure to follow its own rules. Consequently, Oregon alleges, the putative cut-off date established in the first "A" list was never validly promulgated. Oregon reiterates that it exercised due diligence in attempting to ascertain which one of the two inconsistent public notices was correct. Oregon further asserts that the Commission committed a prejudicial procedural error in returning its application, and contends that a waiver of the cut-off rule in the instant case is justified by unusual and compelling circumstances. Oregon claims that the Commission has consistently waived its cut-off rules where the applicant filed late in reliance upon ambiguous or erroneous language in Commission orders or other documents, and the denial of the waiver in the immediate situation was inconsistent with Commission precedent and policy. Lastly, Oregon alleges that, in its denial of the request for waiver, the Commission relied upon erroneous and prejudicial findings of material questions of fact relating to Foundation's solicitation of Federal grant funds administered by the National Telecommunications and Information Administration ("NTIA").

6. Historically, our cut-off rules were prompted by the Court's decision in *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, (1945) which required the Commission to conduct comparative hearings whenever mutually exclusive applications for broadcast facilities are filed. *See also* 47 U.S.C. § 309(e). The cut-off rule serves two purposes. First, it advances the interest of administrative finality by permitting the Commission to fix a date certain for mutually exclusive applications to be filed. Secondly, it aids timely filed broadcast applicants by granting them a protected status that allows them to prepare for what often will be an expensive and time-consuming contest, fully aware of the competitors they will be facing. *City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656, 663 (D.C. Cir. 1984). Accordingly, as discussed more fully below, because of the importance of the cut-off rules we have waived them only under extraordinary circumstances. We find the Bureau's decision to deny waiver of the cut-off rule to have been appropriate, and we decline to reverse that action.

7. We disagree with Oregon's conclusion that the Bureau failed to provide adequate notice. Oregon would have the Commission believe that the reason its application was untimely filed with respect to the Foundation application was solely due to its confusion over the duplicative cut-off dates. We do not accept this explanation for Oregon's filing delay. The Commission's processing procedures for applications for noncommercial, educational FM stations are distinctly different from the procedures established for commercial FM stations. *Compare* 47 C.F.R. §§ 73.3573(e) and (f) with 47 C.F.R. § 73.3573(g). Under the commercial FM processing procedures, applications are considered mutually exclusive if they are timely filed within an established 30 day filing window, or if they are filed on the same day in accordance with the first-come-first-serve rules. However, an application for a noncommercial, educational FM station will be considered mutually exclusive with an earlier-filed application if it is filed at any time during the pendency of the application and *up to* the established "A" cut-off date of the first filed application. Thus, the cut-off date serves to close the door to the filing of competing applications; the cut-off rule does not preclude the filing of mutually exclusive applications prior to the release of the cut-off list.

8. Commission records indicate that Foundation's application was received on June 10, 1988. This application appeared on a July 11, 1988 *Public Notice* indicating that the application had been tendered for filing, Report No. 14214. Accordingly, to be considered mutually exclusive with Foundation's application, Oregon could have filed an application at any time after that date. Oregon was clearly alerted to begin the preparation of an application for submission at this preliminary stage. The Court of Appeals for the District of Columbia Circuit has emphasized the importance of a potential applicant diligently and responsibly pursuing an authorization. "[T]he burden ... is, and properly should be, upon an interested person to act affirmatively to protect himself." *Red River Broadcasting Co. v. Federal Communications Commission*, 98 F.2d 282, 286 (D.C. Cir. 1938), cert. denied, 305 U.S. 625 (1938); *Spanish International Broadcasting Company v. Federal Communications Commission*, 385 F.2d 615 (D.C. Cir. 1967). In the instant case, Oregon had actual knowledge that Foundation's application had been filed and was pending before the Commission, because on June 29, 1989, six months prior to the cut-off date, it filed a pleading entitled "Request for Sanctions", against the Foundation application.[3] In addition, Oregon received a courtesy copy of the Bureau's November 29, 1989 deficiency letter to Foundation. Thus, while Oregon was clearly aware of the pendency of Foundation's application, for reasons known only to Oregon, it elected to wait eighteen months to file a

[3] Subsequently, on September 29, 1992, the Chief, Audio Services Division denied Oregon's request and granted Foundation's application.

mutually exclusive application. Under these circumstances, we believe that Oregon's arguments concerning lack of official notice are misplaced.

9. Oregon claims to have exercised due diligence in its attempt to determine the correct cut-off date for Foundation's application. The Application for Review, however, continues to emphasize the reliance placed on the dates published in the FAIR Report. As noted by the Bureau, the FAIR Report is an unofficial, secondary source not sanctioned by the Commission. Additionally, Oregon incorrectly assumed that a staff deficiency letter precluded the placing of Foundation's application on a cut-off list. Oregon's interpretation notwithstanding, this letter merely requested further technical information concerning Foundation's proposal. The deficiencies addressed in the letter are not defects that delay the acceptance of an application; they are defects that must be corrected before the application will be granted. A cut-off list is the official public notice of acceptance of the listed applications. Given the nature of the defects in question, there was, under consistent Commission practice, no reason to find Foundation's application unacceptable and to delay its listing. Oregon also states that it was not served a copy of a January 2, 1990 letter from Foundation to the staff which requested that its application be deleted from the second, erroneous, cut-off list. Oregon claims that if it had been served a copy of this letter, it would have filed an application by the January 10, 1990 cut-off date. However, given the time that had already transpired since the filing of Foundation's application, and the limited time remaining for Oregon to submit its application, this claim is only an exercise in speculation.

10. In point of fact, Oregon took no affirmative action before the Commission in an attempt to resolve its confusion concerning the multiple cut-off dates. Between the December 28, 1989 erroneous release of the second cut-off list, and the January 10, 1990 expiration of the first "A" cut-off list, a thirteen day time period elapsed in which Oregon clearly could have come to the Commission and formally sought clarification. For example, Oregon could have notified the Commission in writing of the cut-off discrepancy, and either sought clarification of the correct cut-off date, or requested that the Commission immediately issue an *erratum* to remedy the error. In the alternative, prior to the first "A" cut-off date, Oregon could have pursued the option of notifying the Commission in writing that it could not timely file an application in accordance with the earlier cut-off date, and timely requested a waiver so as to permit it to file its application pursuant to the second cut-off date. Oregon failed to avail itself of either of these options. Consequently, we remain unconvinced of Oregon's timely diligence. As the Commission has previously stated, "when an application must be filed by a specified date, and an applicant chooses for its own reasons to withhold the filing of its application until after the cut-off date, it must, as a late-filed applicant, stand aside while other applications which have been timely filed have the opportunity to be heard." *Community Broadcasting Co.*, 44 FCC 1931, 1934 (1960). For all of Oregon's alleged efforts to determine the correct cut-off date, the simple reality is that Oregon engaged in an incorrect assumption, then chose to ignore the first list and file its application in response to the second.

11. Oregon asserts that a waiver of the cut-off rules was justified in the unique circumstances presented, and the Bureau's denial of the requested waiver was inconsistent with case precedent and established policy. We disagree and affirm the staff's denial of the waiver request. It is established Commission policy that a waiver of the cut-off rule will be granted only in response to extraordinary circumstances. As articulated, "[t]hese cut-off procedures are observed in all cases except where unusual and compelling circumstances require otherwise." *Bronco Broadcasting Co., Inc.*, 50 FCC 2d 529, 533 (1974). Moreover, in *Florida Institute*, the Court affirmed the Commission policy granting waivers from compliance with the cut-off rule "only in extreme cases involving extraordinary circumstances' [quoting *Nazarene Theological Seminary Radio Corporation*, 52 RR 2d 559, 563 (1982)] and only when the untimely applicant has demonstrated that it acted with reasonable diligence and thus that its tardiness was attributable to circumstances beyond its control." *Id.* at 553. Most importantly, it is "well established that an applicant for waiver of an agency rule has a substantial burden to demonstrate the inapplicability of the rule. This is particularly true where, as here, the objective is to give order to the Commission's proceedings and casual waiver of the rules could easily nullify this objective." *RKO General, Inc.*, 89 FCC 2d at 321. By way of example, the Commission has determined such circumstances to occur where a group of interested citizens, faced with the possibility of losing their community's only educational television station allocation, entered into protracted and unsuccessful settlement negotiations with an applicant whose application had appeared on cut-off. As the cut-off date approached, the citizens group first timely filed a petition to deny the application, and in addition, prior to the expiration of the cut-off date, requested a 90-day extension of that date. *See Denton Channel Two Foundation, Inc.*, 85 FCC 2d 983 (1981). Similarly, we have waived the cut-off rule where an applicant, which had expended considerable effort to prepare nine mutually exclusive educational television applications, found that it had neither the expertise nor the resources to file its applications prior to the established cut-off date, and requested a waiver prior to the cut-off date. *See Alabama Citizens for Responsive Public Television*, 53 FCC 2d 457 (1975).

12. In contrast to the above-cited cases, Oregon's waiver request occurred subsequent to Foundation's cut-off date. Moreover, as noted in the Bureau's letter, Oregon has admitted that a delay experienced in receiving certain technical exhibits prevented it from finalizing the Redding application prior to the first "A" cut-off date. This particular delay was not raised until *after* both cut-off dates had passed. Thus, while Oregon attempts to analogize its situation to the cases discussed above, it is apparent that Oregon's factual situation fails to parallel those in which the Commission has, in the past, granted a waiver of the cut-off rule.

13. Oregon claims that the staff's return of its application resulted in the denial of due process. As discussed above, Oregon had actual knowledge of both the filing of Foundation's application and its cut-off date. Furthermore, Oregon has successfully prosecuted applications with the Commission previously, and cannot, therefore, plead ignorance with respect to Commission policy and procedures. *Cf. Alabama Citizens for Responsive Public Television, supra.* (Cut-off rule waived, in part, because applicants were a group without previous experience or expertise in broadcasting.) The lateness of Oregon's application was due to reasons totally within its control.

We disagree with Oregon's contention that Commission error, rather than its own failure to timely file its application, was procedurally prejudicial to Oregon.

14. Oregon also argues that the issuance of the second cut-off date constitutes a failure by the Commission to provide adequate notice. In support, Oregon cites *Satellite Broadcasting Co. v. Federal Communications Commission*, 824 F.2d 1 (D.C. Cir. 1987) and *Ridge Radio Corporation v. Federal Communications Commission*, 292 F.2d 770 (D.C. Cir. 1961) for the proposition that, when the Commission specifies two conflicting dates by which an application must be filed, the Commission has failed to provide clear and adequate notice. *Satellite Broadcasting Co.* involved a late-filed application for Private Operational Fixed Microwave Services that had been erroneously filed with the Commission in Washington, because the Commission had failed to properly publish, under new regulations, the filing location for such applications. *Ridge Radio Corporation* involved inadequate notice to an applicant whose application conflicted with third party applicants whose applications were not listed on a cut-off list. These third party applications, in turn, conflicted with an application on the cut-off list. The cut-off notice format used at that time failed to refer to the possibility of mutual exclusivity with an applicant whose application does not appear on the cut-off list. Oregon employs an overly broad interpretation of these cases, as neither addresses the factual situation at hand. The Commission has declined to hold that the placement of an application on two cut-off lists constitutes, *per se*, lack of adequate notice. Moreover, in *Florida Institute*, an analogous situation involving a second, erroneously issued "A" cut-off list, the Court declined to hold that the errant placement of an application on a second "A" list constituted lack of adequate notice.[4]

15. Oregon contends that the Commission has found compelling circumstances warranting waiver of the cut-off rule to have occurred when an applicant files late in reliance upon ambiguous or erroneous language in Commission orders or other documents. In support of this contention, Oregon cites *Ramon Rodriguez & Associates*, 3 FCC Rcd 407 (1988) and *The Dudley Station Corp.*, 16 RR 2d 1151 (1969). However, neither case involved the issuance of a second, erroneous, cut-off list. *Ramon Rodriguez & Associates* involved the disparate treatment and dismissal of an applicant which had filed in response to erroneous data contained in an FM allocation order for a commercial FM channel. *The Dudley Station Corp.* involved an ambiguity regarding the effective date in determining whether old or new rules applied with respect to the cut-off date in a renewal proceeding. Furthermore, the Court in *Florida Institute* declined to find that the Commission's issuance of an erroneous cut-off list justified a waiver of the cut-off rule. Oregon has failed to demonstrate the existence of unusual and compelling circumstances and, thus, failed to successfully meet the substantial burden warranting waiver of the cut-off rule.

16. Next, Oregon argues that the Commission's failure to specify one date certain, in contravention of 47 C.F.R. §§ 73.3564(c) and 73.3573(d) (currently Section 73.3573(e)), was a violation of its own rules. Citing *Way of Life Television Network, Inc., supra*, Oregon states, "If the Commission does not comply with its own rules regarding notice of a cut-off date, then the 'putative cut-off date was never validly promulgated.'" (Petition at p. 14.) Consequently, Oregon claims, the Bureau's failure to follow its own rules compels the conclusion that no valid cut-off date was established by the first, December 6, 1989 public notice and, therefore, it cannot be penalized for failure to abide by that cut-off date. A similar argument was advanced by the appellant in *Florida Institute*. However, the Court disagreed, stating:

> The core of the [appellant's] case, however, is its contention that the FCC staff's mistaken issuance in September 1986 of the new "A" list, rather than the "B" list appropriate under the cut-off rules, gave the [appellant] rights it would not otherwise enjoy. This new "official notice," the [appellant] argues, effectively started the cut-off process over again, and this time the [appellant] applied on time. We do not agree. The new "A" cut-off date could not supplant the earlier one because the September 1986 notice was without legal effect: "[i]t is a 'well-settled rule that an agency's failure to follow its own regulations is fatal to the deviant action.'" *Way of Life Television Network, Inc. v. FCC*, 593 F.2d 1356, 1359 (D.C. Cir. 1979)(quoting *Union of Concerned Scientists v. Atomic Energy Comm'n*, 499 F.2d 1069, 1082 (1974)).

952 F.2d at 553. In the instant case, the deviant staff action was clearly the placement of Oregon's application on a second "A" cut-off list. Contrary to Oregon's assertions, that erroneous action did not render the first cut-off date null and void.

17. Finally, Oregon claims that, in returning its application, the staff relied on erroneous and prejudicial findings concerning material questions of fact. Oregon's assertions in this regard concern Foundation's reliance upon Federal funds administered by NTIA. Oregon contends that Foundation's June 10, 1988 application indicates in Section III, Item 1 of FCC Form 340 that it is not dependent on NTIA funds. Yet, Oregon argues, the Bureau erroneously presumed Foundation was relying on NTIA funding, as reflected in its June 21, 1990 letter, when it stated:

> [W]e note the dependence of [Foundation] (as well as Oregon) on Federal funds for the construction of its proposed facilities. If we were to waive the cut-off rule, the fact that [Foundation's] application was in a mutually exclusive situation would eliminate it from consideration for funding during this Fiscal Year. As a result, the service [Foundation] proposes to provide to the community of Redding would be considerably delayed.

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[4] Oregon attempts to distinguish its situation, in which both the correct and incorrect "A" cut-off lists had a period of time in common, from the *Florida Institute* situation, wherein the petitioner relied on a second, erroneous "A" cut-off list released two years after the earlier, correct, cut-off list. We are unpersuaded that the facts in the instant case are somehow more deleterious to Oregon than the factual circumstances given in the *Florida Institute* case.

Therefore, Oregon contends, the staff erred when it balanced the equities and determined that grant of Oregon's waiver request would be fundamentally unfair to Foundation.

18. In *Florida Institute*, the Court recognized that, in deciding to waive the cut-off rule, the Commission must weigh the impact of such a decision on the timely filed applicant. The Court stated:

> [T]he Commission (and this court) has long recognized, such diligent applicants have a legitimate expectation that the cut-off rules will be enforced. *See City of Angels*, 745 F.2d at 663 ("[The cut-off rules aid] timely broadcast applicants by granting them a 'protected status' that allows them to prepare for what will often be an expensive and time-consuming contest, fully aware of the competitors they will be facing." (citation omitted)); *see also RKO General*, 89 FCC 2d at 320-21. Of course, timely applicants have no "vested right against challenge from untimely competitors," in the sense of precluding the FCC from ever granting a cut-off waiver, but they certainly have an equitable interest whose weight it is "manifestly within the Commission's discretion to consider." *City of Angels*, 745 F.2d at 663 n.7. We cannot quarrel, then, with the FCC's refusal to permit "[the] late-filed application ... to have equal footing with [the timely filed applicant] who has proceeded diligently." *Florida Institute of Technology*, 4 FCC Rcd at 1551.

952 F.2d at 554.

19. Oregon is correct in its assertion that, as originally filed, Foundation's application did not reflect dependence upon a Federal grant from NTIA. Nevertheless, in a letter directed to the Commission, dated February 26, 1990, NTIA notified the Bureau that Foundation had applied for a NTIA administered Federal grant. The staff took official notice of this formal notification by another Federal agency, and consequently, properly considered the impact upon Foundation's application in its consideration of the Oregon waiver request.[5]

20. Accordingly, for the reasons set forth above, the Application for Review filed by The State of Oregon Acting By and Through The State Board of Higher Education IS HEREBY DENIED.[6]

FEDERAL COMMUNICATIONS COMMISSION

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Secretary

[5] Foundation subsequently withdrew its NTIA application on August 27, 1990; however, this action occurred after the Bureau's June 21, 1990 decision denying Oregon's request for waiver. Thus, based on the information before it at the time, the Bureau properly balanced the equities in its analysis of Oregon's waiver and request for consolidation.

[6] On October 19, 1992, Oregon filed a Supplement to its Application for Review. Oregon's Supplement alleges that a Congressional aide received, and related to counsel for Oregon, incorrect advice from a Commission staff member when inquiring as to which cut-off list was to be applicable. Oregon contends that this advice, which was erroneous, equitably estops the Commission from refusing to accept its late-filed application. Oregon's Supplement pertains to information in existence at the time of filing, but not contained in the waiver request. Since Oregon is seeking Commission action on a matter which was not before the staff at the time it acted on the request for waiver, its Supplement is procedurally defective pursuant to 47 C.F.R. § 1.115(c). Additionally, Oregon's Supplement is untimely. Since the staff action denying Oregon's request for waiver and returning its application appeared on a *Public Notice* released July 11, 1990, Report No. 20900, the last date for filing Oregon's application for review and any supplement thereto was August 13, 1990. *See* 47 C.F.R. §§ 1.4(b) and 1.115(d). Accordingly, in light of the above, Oregon's Supplement has not been considered in our disposition of the Application for Review. We note, however, that even had the substance of the Supplement been considered by the Bureau, it would not have altered the result in the instant case. "A person relying on informal advice given by the Commission staff does so at their own risk." *Mary Ann Salvatoriello*, 6 FCC Rcd 4705, 4708 (1991) (citing *Texas Media Group*, 5 FCC Rcd 2851, 2852 (1990); *aff'd sub nom. Malkan FM Associates v. Federal Communications Commission*, 935 F.2d 1313 (D.C. Cir. 1991) *See also M & C Broadcasting, Inc.*, FCC 85-217, released April 29, 1985 (doctrine of equitable estoppel unsuccessfully invoked where applicant claimed reliance on informal inquiry to staff concerning establishment of a cut-off date); *220 Television, Inc.*, 81 FCC 2d 575 (1980) (waiver of cut-off rule denied where late filed applicant relied solely on telephone inquiries to Commission staff concerning cut-off date).

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 92-164

In the Matter of

Amendment of Part 80 of the Commission's Rules Concerning Class C Emergency Position Indicating Radio Beacons. RM-7838

REPORT AND ORDER

Adopted: May 3, 1993; Released: May 18, 1993

By the Commission:

I. INTRODUCTION

1. In a *Notice of Proposed Rule Making* (*Notice*), 7 FCC Rcd 5102 (1992), the Commission proposed to amend Part 80 of the Rules, 47 C.F.R. Part 80, to phase out the use of Class C Emergency Position Indicating Radio Beacons (EPIRBs) after February 1, 1999. The *Notice* was initiated by a petition for rule making from the United States Coast Guard (Coast Guard).[1] This Report and Order adopts the rule amendments as proposed.

II. BACKGROUND

2. EPIRBs are small, battery powered transmitters carried on ships for the purpose of sending a distress signal. The distress signal is used both as an alarm to alert others that a ship is in distress and as a beacon to aid in its location by search and rescue (SAR) personnel. There are two general classes of EPIRBs: those primarily intended to be detected by satellite (satellite EPIRBs)[2] and those intended to be detected by nearby ship or coast stations (Class C EPIRBs). Satellite EPIRBs are used in conjunction with the COSPAS-SARSAT system of polar orbiting satellites that employ dedicated receivers to detect distress signals.[3] These satellites relay the EPIRB's distress signal and calculated position to SAR personnel. Class C EPIRB distress signals, however, are transmitted alternately on channels the COSPAS-SARSAT system does not receive. The distress signal is transmitted for a short period on marine VHF channel 16 for alerting, and for a long period on marine VHF channel 15 to allow SAR personnel to "home in" on the signal.[4] Further, because Class C EPIRBs transmit at very low power, the effective range of the distress signal is limited, and ships in distress must rely on nearby stations to detect and respond to Class C EPIRBs' signals.

3. Both the Coast Guard and the Commission require certain vessels to carry EPIRBs for safety purposes. The Coast Guard, for example, requires all ocean-going cargo ships and passenger ships certified for ocean service or coastwise service more than 20 miles from a harbor to carry a satellite EPIRB. The Coast Guard also requires certain vessels certified for Great Lakes service to carry one or sometimes two Class C EPIRBs.[5] The Coast Guard, however, will accept one 406 EPIRB as equivalent to two Class C EPIRBs. The Commission recently adopted regulations implementing the Global Maritime Distress and Safety System (GMDSS) which will require all passenger ships and all large cargo ships on international voyages to install a 406 EPIRB[6] by August 1, 1993.[7] Under the Commission's Rules, recreational boats and small commercial vessels are not required to carry an EPIRB but may voluntarily equip with either a satellite EPIRB or Class C EPIRB.

III. DISCUSSION

4. In its Petition the Coast Guard requested that the Commission eliminate the use of Class C EPIRBs by February 1, 1999.[8] The Coast Guard pointed out the changes in watch requirements under GMDSS which will become effective in 1999. Further, it stated that it favors the use of satellite EPIRBs which it claims are widely used and much more effective in SAR incidents than Class C EPIRBs.[9] Finally, the Coast Guard noted that it is currently recommending that ships use satellite EPIRBs in place of Class C EPIRBs. We agreed with the Coast Guard and proposed in the *Notice* to phase out the use of Class C EPIRBs. Our intent was to promote the safety of life and property at sea and to minimize the differences between Commission and Coast Guard requirements. Mr. Robert K. Tendler of Tendler Technologies, Inc. (Tendler), filed comments. Tendler and the Coast Guard filed Reply Comments.[10]

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[1] RM-7838, Report 1866, October 28, 1991.

[2] We are using the term satellite EPIRB herein to include all categories of EPIRBs capable of being detected by satellite.

[3] COSPAS-SARSAT is a joint international satellite-based search and rescue system established by Canada, France, the USSR, and the United States to detect and locate emergency radio beacons transmitting on 121.5 MHz or 406.025 MHz. The U.S. satellites in this system also monitor 243.0 MHz.

[4] Marine VHF channel 16 is the international safety, distress and calling channel. Marine VHF channel 15 is used for environmental transmissions and Class C EPIRB distress transmissions.

[5] *See* U.S. Coast Guard Navigation and Vessel Inspection Circular No. 9-91, May 31, 1991.

[6] The term "406 EPIRB" refers to satellite EPIRBs that operate on the frequency 406.025 MHz. *See* 47 C.F.R. §§ 80.1053, 80.1055, 80.1059 and 80.1061.

[7] The GMDSS is an automated ship-to-shore distress alerting system that relies on satellite and advanced terrestrial systems. The GMDSS regulations apply to cargo ships of 300 tons gross tonnage and over on international voyages or in the open sea, and to ships carrying twelve passengers or more irrespective of size on international voyages or in the open sea. These ships are termed "compulsory ships." *See* Report and Order, PR Docket 90-480, 7 FCC Rcd 951 (1992).

[8] Implementation of the GMDSS commenced on February 1, 1992. The system is scheduled to be fully implemented by February 1, 1999.

[9] Coast Guard Petition at 1.

[10] We note in passing here that neither of the two Class C EPIRB manufacturers filed comments opposing the proposal.

5. Tendler opposes eliminating Class C EPIRBs. He argues that Class C EPIRBs provide one more method of emergency signaling and, thus, one more opportunity for increased safety at sea.[11] Further, Tendler takes exception to the statement in the *Notice* that the Coast Guard would discontinue its aural watch on channel 16 in 1999.[12]

6. The Coast Guard, in reply comments, reemphasizes the arguments it made in its petition that the switching of the watch channel from Channel 16 to Channel 70 under GMDSS will make Class C EPIRBs obsolete and that satellite EPIRBs are much more reliable. Further, it contends that Class C EPIRB distress signals may not be recognized or detected because these EPIRBs are so infrequently employed that the signal is unfamiliar to most vessel operators and even some Coast Guard watchstanders, and the distress signal is often masked due to congestion on Channel 16.[13] The Coast Guard restates its request that the Commission eliminate Class C EPIRBs by 1999. In reply comments[14] Tendler suggests that the answer to the Coast Guard's concerns regarding recognition of Class C EPIRB distress signals is to require that Class C EPIRBs have the Emergency Vessel Location System[15] to enable Class C EPIRBs to transmit a synthesized voice distress message on channel 16 along with the distress signal in a manner similar to that provided for marine transmitters.[16]

7. EPIRBs are safety devices whose functions are to alert others that there is a ship in distress and to aid SAR personnel in locating that ship. To be effective three things must happen: the EPIRB must function properly (transmit an emergency signal), someone must hear the distress transmission, and someone must respond. At issue here is reception of the distress signal. As the Coast Guard points out, GMDSS, which will become mandatory in 1999, changes the mandatory watch requirements for vessels from marine VHF Channel 16 to an automated watch on Digital Selective Calling (DSC) Channel 70. DSC equipment is now available. As 1999 approaches and more and more ships employ DSC, there will be fewer ships able to hear Class C EPIRB distress calls, thereby drastically reducing their effectiveness.[17] Further, even though the Coast Guard modified its position on a Channel 16 watch, stating that it would continue an aural watch on Channel 16 past 1999, it noted that it intended to discontinue the Channel 16 watch as soon as practicable after 1999. If no one is monitoring channel 16 for distress calls, Class C EPIRBs cannot be effective in saving lives and property. Moreover, allowing the continued use of these devices gives boaters a false sense of security. Therefore, we are phasing out the use of Class C EPIRBs. This action will promote the safety of life and property and make the Commission's Rules in this area more consistent with Coast Guard Rules and policy.

8. To ensure that this rule making causes as little disruption to the marine community as possible, we will permit the manufacture, importation, sale, and installation of Class C EPIRBs until February 1, 1995. To provide sufficient time for current users to obtain other EPIRBs, we will grandfather the use of existing Class C EPIRBs until February 1, 1999. We believe that by coordinating this rule making to the implementation of GMDSS in 1999, we will allow sufficient time for the marine public to obtain another type of EPIRB and adapt to the changes in monitoring requirements.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), Part 80 of the Commission's Rules, 47 C.F.R. Part 80, IS AMENDED as set forth below.

10. IT IS FURTHER ORDERED THAT this Report and Order will be effective (thirty days after publication in the Federal Register).

11. For further information, contact: Susan H.R. Jones, Private Radio Bureau, (202) 632-7175.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FINAL RULE

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

A. PART 80 - STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.15 is amended by revising paragraph (e)(1) as follows:

§ 80.15 Eligibility for station license.

* * * * *

[11] Tendler comments at 2.
[12] Tendler comments at 2.
[13] Coast Guard comments at 1.
[14] Tendler filed late reply comments, received by the Secretary October 16, 1992. We have accepted them in order to have a complete record.
[15] *See* Report and Order, PR Docket 91-294, 7 FCC Rcd 1608 (1992).
[16] As noted above, Class C EPIRBs transmit a distress signal alternately on marine VHF channels 15 and 16 according to a complex, preprogrammed cycle. The distress signal is, however, never transmitted on marine VHF channel 16 for more than 1.5 seconds. Tendler's suggestion, therefore, can not be accommodated under the current mode of operation.
[17] The Coast Guard has petitioned the Commission to require a minimum DSC capability by 1999 for all ship station transmitters. RM-8031, Report No. 1899, July 13, 1992.

(e) EPIRB stations. (1) New class C EPIRB stations will not be authorized after February 1, 1995. Class C EPIRB stations installed and licensed before February 1, 1995, will be authorized until February 1, 1999:

* * * * *

3. Section 80.205 is amended by adding a new Footnote 13 to the "G3N" entry in the table in paragraph (a) to read as follows:

80.205 Bandwidths.

(a) * * *

Class of Emission	Emission designator	Authorized Bandwidth (kHz)
* * * * *		
G3N[3,13]	* * *	* * *
* * * * *		

[3] Applicable only to EPIRB's.

* * * * *

[13] Class C EPIRB stations may not be used after February 1, 1999.

* * * * *

4. Section 80.207 is amended by adding a new Footnote 13 to the "156.750 and 156.800 MHz" entry in the table in paragraph (d) to read as follows:

80.207 Classes of emission.

* * * * *

(d) * * *

Types of stations	Classes of emission
* * * * *	
Distress, Urgency, and Safety[8,9]	
156.750 and 156.800 MHz[13]	* * *
* * * * *	

[8] For direction finding equipment requirements see § 80.375.

[9] Includes distress emissions used by ship, coast, EPIRB's and survival craft stations.

* * * * *

[13] Class C EPIRB stations may not be used after February 1, 1999.

5. Section 80.209 is amended by adding a new Footnote 6 to the "Operating on 156.750 and 156.800 MHz" entry in the table in paragraph (a) to read as follows:

80.209 Transmitter frequency tolerances.

(a) * * *

Frequency bands and categories of stations	Tolerances [1]
* * * * *	
(5) * * *	
(iv) * * *	
Operating on 156.750 and 156.800 MHz	* * *
* * * * *	

[1] Transmitters authorized prior to January 2, 1990, with frequency tolerances equal to or better than those required after this date will continue to be authorized in the maritime services provided they retain type acceptance and comply with the applicable standards in this part.

* * * * *

[6] Class C EPIRB stations may not be used after February 1, 1999.

6. Section 80.1057 is amended by adding an introductory paragraph to read as follows:

80.1057 Special requirements for Class C EPIRB stations

Class C EPIRBs shall not be manufactured, imported, or sold in the United States after February 1, 1995. Class C EPIRB stations installed on board vessels before February 1, 1995, may be used until February 1, 1999, and not thereafter.

* * * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 92-153

In the Matter of

Part 90 Fire Call Box
Operations in the
72-76 MHz Frequency Band

REPORT AND ORDER

Adopted: May 3, 1993; Released: May 18, 1993

By the Commission:

I. INTRODUCTION

1. This *Report and Order* adopts the rule changes proposed in our *Notice of Proposed Rule Making*[1] in this Docket. We are amending Part 90 of our Rules to permit Fire Radio Service eligibles to use ten low-power mobile frequencies in the 72-76 MHz band, on a shared basis, for fire call box operations.[2] These amendments will provide for a radio system that will aid in saving lives and property by promoting reliable transmission of fire warning messages.

II. BACKGROUND

2. In the 72-76 MHz band, 68 frequencies are designated for fixed operation and are shared among licensees in several Private Land Mobile Radio Services. While licensees using the frequencies for call box operations are limited by our Rules to an output power of one watt,[3] the other users of the frequencies are not subject to this power limitation. Thus, call box operations, including fire call box transmissions, may suffer interference from licensees operating at much higher power levels. Joint Petitioners have therefore requested[4] that we permit Fire Radio Service eligibles to conduct fire call box operations on ten additional 72-76 MHz channels, currently shared by licensees in the Forest Products, Special Industrial, Railroad, and Manufacturers Radio Services.[5] Licensees using these frequencies may not transmit at an output power greater than one watt, pursuant to 47 C.F.R. § 90.257(b). In response to the IAFC/IMSA Petition, we issued the referenced *Notice of Proposed Rule Making* requesting comment and proposing rule changes to permit Fire Radio Service eligibles to be licensed on the ten additional frequencies in the 72-76 MHz band, on a shared basis, for the purpose of conducting fire call box operations.

III. DISCUSSION

3. All commenters support our proposed Rules.[6] Fire call boxes enable passersby to inform local authorities about fires quickly, thereby decreasing response time and saving countless lives and property. If a call box message is subject to interference, valuable moments may be lost, and the fire may inflict substantial damage. We believe that promoting fire call box operation is integral to public safety and consequently conclude that adopting our proposal will clearly serve the public interest.

4. Furthermore, allowing Fire Radio Service eligibles to share frequencies with licensees in other services transmitting at the same maximum power level[7] will greatly decrease the possibility of interference with fire call box operations.[8] Therefore, based on the record before us, we adopt the proposed rules to make these additional channels available for fire call box operations.

---

[1] Notice of Proposed Rule Making, Part 90 Fire Call Box Operations in the 72-76 MHz Frequency Band, PR Docket No. 92-153, FCC 92-320, 7 FCC Rcd 4571 (1992).

[2] We received two requests for shared use of additional frequencies. First, the International Association of Fire Chiefs, Inc. and the International Municipal Signal Association (IAFC/IMSA or Joint Petitioners) requested that we allow Fire Radio Service eligibles to share twenty frequencies that are the subject of another proceeding. *See* Report and Order, Amendment of Part 90 to Increase the Number of Frequencies in the 72-76 MHz Band for Low-Power Mobile Use, PR Docket No. 91-295, 7 FCC Rcd 293 (1992); comments of the American Association of State Highway and Transportation Officials (AASHTO) at 2. Second, AASHTO asked us to permit highway call box operation on the ten frequencies that are the subject of the instant proceeding. *See* Comments and Supplement to RM-7783, filed by IAFC/IMSA on October 23, 1991, at 1-2. We decline to expand the scope of this proceeding because both requests are already within the scope of another rule making. *See* Notice of Proposed Rule Making, Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, FCC No. 92-469, released November 6, 1992, at para. 17, and proposed Rule Sections 88.907(d), 88.909(6) and 88.911(d), set forth in Appendix D of that item.

[3] Fire call boxes enable pedestrians to notify local authorities of fires or other emergencies. These call boxes transmit signals on 72-76 MHz frequencies designated for fixed use. They are limited to a transmitter output power of one watt by Section 90.241(a) of our Rules, 47 C.F.R. § 90.241(a).

[4] The IAFC/IMSA Petition for Rule Making, RM-7783, was put on public notice on August 26, 1991.

[5] Ten frequencies in the 72-76 MHz band are currently reserved for shared low-power use by the Forest Products, Special Industrial, Railroad, and Manufacturers Radio Services. The frequencies are listed in 47 C.F.R. §§ 90.67(c)(34), 90.73(d)(7), 90.79(d)(4), and 90.91(c)(2). Although these channels are designated for mobile operations, they may also be used by base stations or fixed transmitters. 47 C.F.R. § 90.257(a). Fixed operations may not interfere with reception of television Channels 4 or 5, pursuant to Section 90.257(a)(2) of our Rules, 47 C.F.R. § 90.257(a)(2).

[6] *See* comments of IAFC/IMSA at 2-3, comments of American Association of State Highway and Transportation Officials (AASHTO) at 2, comments of MRFAC at 1.

[7] This shared use is subject to Section 90.257(b), 47 C.F.R. § 90.257(b), which limits transmitter output power to one watt and prohibits 72-76 MHz band mobile operations from interfering with reception of television Channels 4 or 5.

[8] The frequency coordination process should further reduce

IV. CONCLUSION

5. In summary, this *Report and Order* amends Part 90 of our Rules to allow Fire Radio Service eligibles to be licensed on ten low-power frequencies in the 72-76 MHz band for the purpose of conducting fire call box operations. The Fire Radio Service will share these frequencies with licensees in the Forest Products, Special Industrial, Railroad, and Manufacturers Radio Services, and fire call box transmissions must satisfy the provisions of Section 90.257(b) of our Rules.

V. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r) and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 332(a), Part 90 of the Commission's Rules, 47 C.F.R. Part 90, IS AMENDED as set forth in the Appendix below, effective [thirty days after publication in the Federal Register].

7. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

8. For further information concerning this *Report and Order*, contact Julia Kogan, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632-7125.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303 and 332, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. Section 90.21 is amended by revising the Fire Radio Service Frequency Table in paragraph (b) to include ten additional frequencies from 72.44 MHz through 75.60 MHz, to be added immediately following the 72.00 to 76.00 MHz entry, and adding paragraph (c)(19) to read as follows:

§ 90.21 Fire Radio Service.

* * * * *

(b) * * *

Fire Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
	* * * * *	
72.44	Mobile	19
72.48	do	19
72.52	do	19
72.56	do	19
72.60	do	19
75.44	do	19
75.48	do	19
75.52	do	19
75.56	do	19
75.60	do	19

* * * * *

(c) * * *

(19) This frequency is available to the Fire Radio Service for fire call box operations on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required. All communications on this frequency must be conducted with persons or organizations charged with specific fire protection responsibility. All operations on this frequency are subject to the provisions of Section 90.257(b).

* * * * *

3. Section 90.67 is amended by revising the first sentence of paragraph (c)(34) to read as follows:

§ 90.67 Forest Products Radio Service.

* * * * *

(c) * * *

(34) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required. * * *

* * * * *

4. Section 90.73 is amended by revising the first sentence of paragraph (d)(7) to read as follows:

§ 90.73 Special Industrial Radio Service.

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the risk of interference on these channels.

* * * * *

(d) * * *

(7) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required. * * *

* * * * *

5. Section 90.79 is amended by revising the first sentence of paragraph (d)(4) to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(d) * * *

(4) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required. * * *

* * * * *

6. Section 90.91 is amended by revising the first sentence of paragraph (c)(2) to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(c) * * *

(2) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required. * * *

* * * * *

7. Section 90.257 is amended by revising the introductory paragraph (b) and the first sentence of paragraph (b)(1) to read as follows:

§ 90.257 Assignment and use of frequencies in the band 72-76 MHz.

* * * * *

(b) The following criteria shall govern the authorization and use of frequencies within the band 72-76 MHz by mobile stations in the Special Industrial, Manufacturers, Forest Products, Railroad, and Fire Radio Services.

(1) Mobile operation on frequencies in the 72-76 MHz band is subject to the condition that no interference is caused to the reception of television stations operating on Channel 4 or 5. * * *

* * * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION

Kenneth P. Moran
Chief, Accounting and Audits Division

In the Matter of

BellSouth Corporation's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs — AAD 92-89

ORDER

Adopted: May 11, 1993; Released: May 18, 1993

By the Chief, Accounting and Audits Division:

1. On September 30, 1992, BellSouth Corporation (BellSouth) filed revisions to its Cost Allocation Manual (CAM).[1] Included in the filing were revisions to Section VII, Time Reporting Procedures, to implement a statistical sampling process, known as the Work Activity Statistical Sampling Process (WASSP). BellSouth proposes to use WASSP in place of time reporting for assigning certain field technician expenses to Part 32 accounts and Part 64 cost pools.

2. Revisions to time reporting procedures normally take effect 60 days following submission of the revisions. However, BellSouth's revisions raised serious concerns, not only as to how costs are to be allocated among regulated and nonregulated activities, but also as to how costs are to be assigned initially to the appropriate Part 32 accounts. Therefore, on November 2, 1992, we issued an Order staying BellSouth's implementation on WASSP until May 28, 1993, to allow additional time to review whether the revisions comply with the Commission's accounting and cost allocation rules.[2]

3. As part of this review process, we required BellSouth to provide assurance that the results of using statistical sampling are as accurate as the results achievable by using positive time reporting. Additionally, we required BellSouth to have an independent audit of WASSP. BellSouth is in the process of completing the required independent audit. Therefore, we will further stay the effective date of BellSouth's revisions until November 29, 1993, pending completion of the required audit and our review of the audit report and workpapers.

4. Accordingly, IT IS ORDERED that the revisions to BellSouth's Cost Allocation Manual pertaining to Section VII, Time Reporting Procedures, filed September 30, 1992 ARE STAYED until November 29, 1993.

[1] A Public Notice was issued to request public comment on BellSouth's CAM revisions (File Reference AAD 92-73) on October 6, 1992 (DA 92-1397).

[2] BellSouth Corporation's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 7 FCC Rcd 7220 (1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

IDB AERO-NAUTICAL COMMUNICATIONS, INC.,
Complainant,

v. File No. E-93-008

COMMUNICATIONS SATELLITE CORPORATION,
Defendant.

ORDER

Adopted: May 6, 1993; Released: May 18, 1993

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On November 2, 1992, IDB Aero-Nautical Communications, Inc., (IDB) filed the above-captioned Complaint and Request for Expedited Relief against the Communications Satellite Corporation (Comsat).[1] IDB asserted that Comsat violated Title II of the Communications Act by offering rate reductions or discounts in equipment costs to many of its maritime satellite customers and by failing to identify these rebates in its tariff. On January 22, 1993, Comsat filed an Answer and Cross-Complaint which denied rate reductions and discounts and asserted that IDB disregarded the terms of its own published tariffs, provided unlawful refunds and bundled customer premises equipment and tariffed communications services.

2. On March 19, 1993, IDB and Comsat filed a joint request that IDB's Complaint and Request for Expedited Relief and Request for Emergency Relief, and Comsat's Answer and Cross-Complaint and Opposition to the IDB Request for Emergency Relief be withdrawn without prejudice. IDB and Comsat stated that the dispute underlying their respective complaints and IDB's petition for emergency relief had become moot "as a result of changes in the business practices driven by business considerations."

3. We are satisfied that dismissal of the Complaint and Request for Expedited Relief and the Request for Emergency Relief will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.

4. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated by Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the joint withdrawal request filed by IDB Aero-Nautical Communications, Inc. and Communications Satellite Corporation IS GRANTED.

5. IT IS FURTHER ORDERED that the above-captioned complaint, the associated Request for Emergency Relief, and Comsat's Cross-Complaint ARE DISMISSED WITHOUT PREJUDICE and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
and Investigations Branch
Enforcement Division
Common Carrier Bureau

[1] IDB previously filed a petition requesting the Commission to require Comsat to immediately file tariff transmittals reflecting its rates and practices. *See* Request for Emergency Relief filed October 6, 1992 by IDB. Due to the similarity of the issues raised in the request for emergency relief and the complaint, the matters have been consolidated for disposition.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Newport News Cablevision, Ltd.
Complainant,

v. File No. PA-87-0006

Virginia Electric and Power Company
d/b/a Virginia Power Company
Respondent

ORDER

Adopted: May 11, 1993; Released: May 18, 1993

By the Deputy Chief (Operations), Common Carrier Bureau:

1. On March 27, 1987, Newport News Cable, Ltd. (Newport News) filed a complaint pursuant to Section 224 of the Communications Act, as amended,[1] against Virginia Electric and Power Company (VEPCO). The complaint alleged that VEPCO had imposed unreasonable inspection practices and guying standards during an inspection of Newport News's attachments affixed to, and in the vicinity of, VEPCO's utility poles. After careful review of the record, the Common Carrier Bureau (the Bureau) granted, in part, Newport News's petition, and directed the parties to negotiate a monetary settlement pursuant to that Order.[2] On May 27, 1992, Newport News filed a petition asking the Bureau to reconsider its decision denying Newport News relief in regard to VEPCO's guying standards.[3]

2. Subsequently, the parties conducted settlement discussions, and on April 29, 1993, the parties filed a joint motion requesting dismissal with prejudice of the petition for reconsideration and termination of the proceeding. The joint motion also asked that paragraph 15 of the Order, which addresses the reasonableness of VEPCO's guying standards, be vacated as moot because the parties have modified and agreed upon different guying standards than those reviewed by the Bureau.

3. We are satisfied that dismissal of the petition for reconsideration with prejudice, vacation of paragraph 15 of the Order as moot, and termination of this proceeding will serve the public interest. The parties have conducted settlement discussions resulting in a mutually acceptable settlement of outstanding issues related to the complaint. Granting this motion will eliminate the need for further litigation and the expenditure of further time and resources of the parties and this Commission.

4. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 224, and Sections 0.91(j) and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91(j) and 0.291, that the joint motion filed in the above-captioned proceeding IS GRANTED.

5. IT IS FURTHER ORDERED that the petition for reconsideration filed by Newport News Cablevision, Ltd in PA-87-0006 IS DISMISSED WITH PREJUDICE.

6. IT IS FURTHER ORDERED that paragraph 15 of the *Newport News Order*, 7 FCC Rcd 2610, 2612 (Com. Car. Bur. 1992) IS VACATED as moot.

7. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald P. Vaughan
Deputy Chief (Operations)
Common Carrier Bureau

[1] 47 U.S.C. § 224(b)(1).

[2] Newport News Cablevision, Ltd., Complainant, v. Virginia Electric and Power Company, d/b/a Virginia Power, PA 87-0006, *Order*, 7 FCC Rcd 2610 (Com. Car. Bur. 1992).

[3] *Newport News Order*, 7 FCC Rcd at 2612, para. 15. In the *Newport News Order*, the Bureau stated: "[w]e do not find VEPCO's guying requirement for its own poles so onerous as to be unreasonable." *Id.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

Waterway Communications
System, Inc.,

For Renewal of Automated
Maritime Telecommunications
Systems

MEMORANDUM OPINION AND ORDER

Adopted: May 11, 1993; Released: May 18, 1993

By the Chief, Private Radio Bureau:

1. Waterway Communications System, Inc. (Watercom) filed applications to renew licenses for Automated Marine Telecommunications System (AMTS) stations located in the Mississippi River System.[1] These applications were listed on Public Notice number 1666, released on November 20, 1992. WJG Maritel Corporation (WJG), which operates VHF public coast stations, filed Petitions to Deny (Petition)[2] with the Private Radio Bureau on December 21, 1992.

2. AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other marine vessels. VHF public coast stations provide marine VHF radiotelephony and radiofacsimile services to ship stations in the inland waterways, Great Lakes and coastal waters, bays and sounds of the United States.

3. In its Petition, WJG makes two allegations against Watercom. First, WJG states that Watercom has violated Section 201(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 201(b) (Communications Act), by charging noncompensatory rates for its tariffed services and its equipment.[3] The WJG petition and its included affidavit of its vice president Charles J. Drobny (Drobny's affidavit) state that recent closures of VHF public coast stations operated in the Mississippi River System are evidence of Watercom's alleged "unreasonable and unjust rates and practices" (anticompetitive practices).[4] Second, WJG contends that Watercom has monopolized the available spectrum for AMTS.[5]

4. In response to WJG's Petition, Watercom filed an Opposition to Petitions to Deny (Opposition) on January 25, 1993. In its Opposition, Watercom states that none of WJG's charges are supported by specific allegations of fact as required by Section 309(d) of the Communications Act, 47 U.S.C. § 309(d).[6] With respect to WJG's charge that Watercom has engaged in anticompetitive practices, Watercom contends that WJG's petition and Drobny's affidavit rely on "assumptions, speculation and hearsay."[7] In addition, Watercom disputes WJG's contention that Watercom charges noncompensatory rates by stating that it has been profitable since 1990.[8] Further, Watercom refutes WJG's conclusion that it has engaged in any anticompetitive practices that have caused VHF public coast station closures.[9] First, Watercom responds that of the 25 VHF public coast stations that have closed nation-wide since 1987, only 4 were located in the Mississippi River System where Watercom's operations are based.[10] Second, Watercom notes that although three VHF public coast stations referenced competition from Watercom as a causal factor in their closing, none listed it as the principle cause.[11] Rather, Watercom states that the closure applications listed Watercom's AMTS operations as one of several competing services in the marine radio market that apparently brought about their demise.[12]

5. Concerning WJG's allegation that Watercom has engaged in monopolization of the AMTS spectrum, Watercom answers that this issue was fully explored by the Commission and twice disposed of adversely to WJG.[13] Therefore, Watercom concludes, WJG is collaterally estopped from relitigating this issue.[14] Furthermore, Watercom adds that its action to preserve the 218-219 MHz band against reallocation to the Interactive Video and Data Service, as reflected in the Commission's Gen. Docket No. 91-2 rule making,[15] is inconsistent with WJG's monopolization charge.[16]

6. On February 4, 1993, WJG filed a Reply to Opposition to Deny (Reply) in response to Watercom's Opposition. First, WJG's Reply contends generally that Watercom's Opposition is unresponsive to WJG's allegations of anticompetitive practices.[17] Further, WJG maintains that cellular and satellite-based services "are not genuine sources of competition" for Watercom's AMTS operations,[18] and that Watercom's alleged anticompetitive practices are the central causal factor in the closures of VHF public coast stations in the Mississippi River

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[1] For purposes of this proceeding, the Mississippi River System is comprised of the Lower Mississippi River and Gulf Intercoastal Waterway.

[2] WJG filed a great number of substantively identical Petitions to Deny against Watercom. Therefore, this action considers the petitions together as if WJG filed a single petition.

[3] WJG Petition at 13-15.

[4] *Id.* at ii, 14-16.

[5] *Id.* at 7-13.

[6] Opposition at 6-7.

[7] *Id.* at 4-8.

[8] *Id.* at 15-16.

[9] *Id.*

[10] *Id.* at 13-15.

[11] *Id.*

[12] *Id.* Watercom states that the closure applications referenced competition from, *inter alia*, cellular and satellite-based systems.

[13] Watercom's Opposition cites *Petition of Riverphone*, 2 FCC Rcd 239 (1987); *Applications of Waterway Communications System, Inc.*, 2 FCC Rcd 7317, 7318 (1987).

[14] *Id.* at 7-8.

[15] *See Report and Order*, 7 FCC Rcd 1630 (1992), *Memorandum, Opinion and Order*, 7 FCC Rcd 4923 (1992).

[16] *Id.* at 8.

[17] *See* Reply at 1-9.

[18] *Id.* at 6.

System.[19] In support of the allegations in Mr. Drobny's affidavit that Watercom has apparently reduced prices to noncompensatory levels, the WJG Reply concedes that his analysis is based upon assumptions and possibly inaccurate financial data, but adds that "perhaps ... Mr. Drobny's analysis points to the appropriate and proper conclusions."[20] Further, WJG contends that the financial analysis reveals that Watercom's claim of profitability since 1990 is disputable.[21] Finally, WJG claims notes that Watercom's Opposition fails to make a showing that its pricing structure meets the spirit of the Commission's *Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans*, 59 Rad. Reg.2d 70 (P&F) (1985)(Guidelines).[22]

7. We find that WJG has failed to meet the threshold requirement contained in Section 309(d) of the Communications Act that petitions must "contain specific allegations of fact sufficient to show ... that a grant of the application would be prima facie inconsistent with [the public interest]." First, the pleadings of WJG contend generally that recent closures of VHF public coast stations are prima facie evidence of Watercom's alleged anticompetitive practices and that therefore the burden is on Watercom to disprove this allegation by disclosing its corporate financial records. WJG, however, fails to cite a single case where a VHF public coast station closure application referenced anticompetitive practices on the part of Watercom as the reason for closure.[23] In fact, recent VHF public coast station closure applications have cited increased competition in the marine radio market from a variety of sources, including cellular and satellite-based services.[24] We also note that the Commission stated in 1981 that establishing AMTS[25] would, *inter alia*, result in increased competition on the inland waterways, but that the public interest nevertheless required this action.[26] Therefore, we believe that the reason for VHF public coast station closure is generally increased competition in the Mississippi River System from Watercom's AMTS operations, as well as cellular and satellite-based services, rather than alleged anticompetitive actions on the part of Watercom.[27] In addition, we note that WJG's allegations of anticompetitive practices are not supported by, for example, an independent economic analysis of the Mississippi River System's radio market and Watercom's practices therein. WJG concedes in its pleadings that its allegations concerning Watercom's practices are based on "assumptions" and anecdotal evidence from unnamed persons in the industry rather than fact as required by Section 309(d) of the Communications Act.[28] Further, concerning WJG's contention that Watercom has monopolized the AMTS spectrum, we agree with Watercom that this argument appears to be an attempt by WJG to revisit impermissibly an issue that was resolved in earlier proceedings.[29] Therefore, in light of WJG's failure to raise specific allegations of fact, we do not agree that Watercom must disclose its corporate financial records in order to have its AMTS licenses renewed.[30] Accordingly, we

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[19] *Id.* at 6-9.

[20] *Id.* at 5.

[21] *Id.* at 6-9.

[22] *Id.* at 6-9. WJG concedes, however, that the Guidelines do "not appear to have direct applicability to an entirely new venture such as Watercom." *Id.* at 8, n.10.

[23] WJG's Petition cites the closure case of St. Louis Radio, Ltd. as dispositive evidence of Watercom's alleged anticompetitive practices. We concur with Watercom, however, that the St. Louis Radio closure applications referenced competition from cellular radio as the principle causal factor in its closure. The application describes another carrier, although not by name, that provides services similar to an AMTS licensee as merely one of several secondary causal factors. Even assuming, *arguendo*, that the unnamed carrier is Watercom, we note that the St. Louis Radio closure applications do not claim that anticompetitive practices caused its closure. We also note that in correspondence from WJG to the Commission arising from the St. Louis Radio closure, WJG states that "[inland waterway] [c]ustomers have abandoned VHF public coast station service for AMTS, satellite and cellular service." *See* letter from John M. Ballenger, attorney for WJG, to Chief, Special Services Branch, Private Radio Bureau, Federal Communications Commission (November 13, 1992). This letter from WJG essentially contradicts WJG's allegations in this proceeding by stating that AMTS is merely one causal factor among three that have increased the level of competition for public coast stations in the inland waterways radio market. Therefore, we do not believe that the St. Louis Radio closure supports WJG's claims with respect to Watercom's renewal applications at issue in this proceeding.

[24] *See, e.g.*, note 23, *supra*. *See also Notice of Proposed Rule Making and Notice of Inquiry*, PR Docket 92-297, 7 FCC Rcd 7863 (1992)(wherein the Commission, *inter alia*, proposed rules to reclassify public coast stations as nondominant common carriers because of evidence that cellular and satellite-based services are providing significant competition within the relevant marine radio market, and also sought comment on how to improve the marine regulatory environment for coast stations and other marine licensees).

[25] AMTS was initially established as the Inland Waterways Communications System (IWCS).

[26] *See Inland-Waterways Communications Systems, Report and Order*, 84 FCC 2d 875, 890-891 (1981); ERRATA, 46 Fed. Reg. 26485 (1981), *recon.*, 88 FCC 2d 678, 697 (1981); *aff'd sub nom., WJG Telephone Company, Inc. v. FCC*, 675 F.2d 386 (D.C. Cir. 1982).

[27] *See* 47 U.S.C. § 309(a) and (d). *See also* note 23, *supra*.

[28] *See* WJG's Petition to Deny, Attachment A at 1-5 (stating that WJG's financial analysis of whether Watercom is profitable is based upon "WJG's historical experiences with telephone costs and normal business costs ... the known size of Watercom's system - their tower locations and the number of channels authorized for use ... Such calculations by nature must rely on several assumptions ... Our estimates ... are based upon the statements of industry professionals with direct knowledge ... Admittedly the assumptions made herein will vary from Watercom's exact experience)." *See also* Mr. Drobny's affidavit at 3 (stating in support of charges against Watercom's equipment-related practices that "[i]t's not unusual to hear of Watercom technicians traveling some distance to catch a boat and repair their equipment ... Watercom announced that boats could use other "approved" equipment [not provided by Watercom] on their system ... To my knowledge, such equipment was never offered by any other company ... We've heard from several sources in the barge industry that Watercom kept adjusting their prices for the equipment downward.)"

[29] *See* note 8, *supra*. *See also Office of Communications v. FCC*, 911 F.2d 803, 808 (D.C. Cir. 1990)(noting the public interest in preserving the finality of proceedings).

[30] *See* note 22, *supra*. We note that it is not the policy of the Private Radio Bureau to require marine licensees to disclose their financial records at the time of license renewal. *See* 47 U.S.C. § 220 (providing the Commission with, *inter alia*, discretionary authority concerning the corporate financial records of common carriers).

find that WJG's allegations fail to meet the requirements of Section 309(d) of the Communications Act. *Eastern Carolinas Broadcasting Co. v. F.C.C.*, 762 F.2d 95 (D.C. Cir. 1985).

8. For the reasons stated above, we conclude that petitioner's Petitions to Deny are without merit. Accordingly, IT IS ORDERED that the Petitions to Deny the Applications of Waterway Communications System, Inc. filed by WJG Maritel Corporation ARE DENIED and the applications of Waterway Communications System, Inc. for renewal of their Automated Maritime Telecommunications System station licenses for the Mississippi River System ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Temporary Waiver of the Maritime Service Rules (Part 80) to Permit the Use of Marine VHF Channel 77 for ship-to-coast operations.

ORDER

Adopted: May 11, 1993; Released: May 18, 1993

By the Chief, Private Radio Bureau:

1. The United States Coast Guard (USCG), Captain of the Port of Galveston, Texas has requested a waiver of Part 80 of the Commission's Rules, 47 C.F.R. Part 80, to permit the use of marine VHF channel 77 for ship-to-coast operations in the ports of Texas City and Galveston, Texas.[1] Marine VHF channel 77 is allocated solely for intership communications.[2] The Commander of the Eighth Coast Guard District in New Orleans, Louisiana, the Galveston-Texas City Pilots, the Texas City Terminal Railway Company, Texas A&M University at Galveston, College of Geosciences and Maritime Studies, and the Houston/Galveston Navigation Safety Advisory Committee, all support expanding the authorized use of channel 77 to permit ship-to-coast operation.[3] The Coast Guard asks that linehandlers, port authorities, and shoreside facility operators be permitted to use channel 77 for communications with ships arriving at berthing facilities in these cities.

2. We believe that this request has merit. Marine VHF channel 77 is used for docking operations involving large ships, tugboats, and personnel on the dock, acting cooperatively to ensure a safe operation.[4] Presently, at least two separate marine channels must be used to coordinate the docking operation. One channel for intership communications between the pilot and tugboats, and one channel for ship-to-shore communication with, for example, line handlers. The Coast Guard states that permitting the shared use of Channel 77 will promote safe and timely movement of vessels arriving or departing the ports of Galveston and Texas City. We believe that making one channel available for common use during docking operations nation-wide could improve safety during docking operations. Therefore, we will review the implementation of this temporary waiver in the Galveston area to determine whether a rule making for a nation-wide application is warranted.[5]

3. This Order will provide a temporary waiver of Section 80.373(f) of the Commission's Rules, 47 C.F.R. § 80.373(f), to permit ship-to-shore operation on marine VHF channel 77, 156.875 MHz. Operation under the terms of this waiver is restricted to the ports of Galveston and Texas City, Texas, and is limited to communications involving the safe and expeditious docking of ships in those ports. All other conditions for the use of channel 77 remain the same.

4. IT IS THEREFORE ORDERED, pursuant to the authority contained in Sections 0.331 and 1.3 of the Commission's Rules, 47 C.F.R. §§ 0.331 and 1.3, that Section 80.373(f) of the Commission's Rules, 47 C.F.R. § 80.373(f) IS WAIVED to the extent that marine VHF channel 77 may be used for ship-to-shore communications in the ports of Galveston and Texas City, Texas. This Order is effective on the date adopted, pending the Commission's final action in PR Docket 92-257, and may be terminated at any time without hearing if, in the Commission's discretion, the need for such action arises.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

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[1] *See* letter from Captain Richard E. Ford, United States Coast Guard, Captain of the Port, Galveston, Texas, to Chief, Aviation and Marine Branch (May 6, 1993).

[2] *See* Section 80.373(f) of the Commission's Rules, 47 C.F.R. § 80.373(f).

[3] *See* letters from C.B. Newlin, Chief, Operations Division, Eighth Coast Guard District, to Chief, Aviation and Marine Branch, (April 23, 1993); from Captain J. H. Smith, Galveston-Texas City Pilots, to Chief, Aviation and Marine Branch (November 2, 1992); from K.L. DeMaet, President, Texas City Terminal Railway Company, to Chief, Aviation and Marine Branch (April 29, 1993); from Captain Stephen F. Ford, Texas A&M University at Galveston, College of Geosciences & Maritime Studies, to Executive Secretary, Navigation Safety Advisory Council (January 27, 1993); from Ted Thorjussen, Chairman, Houston/Galveston Navigation Safety Advisory Committee, to Chief, Aviation and Marine Branch (February 16, 1993).

[4] The arrival and departure of large ships from the ports of Galveston and Texas City, Texas are controlled by pilots who are familiar with local conditions and board such ships at the entry point to the port.

[5] We have included the letters received in support to this waiver request as comments to the *Notice of Proposed Rule Making and Notice of Inquiry* on the Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92-257, 7 FCC Rcd 7863 (1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Report No. DS-1311 **Released: May 18, 1993**

COMMENTS SOUGHT ON PREEMPTION OF LOCAL ZONING REGULATION OF SATELLITE ANTENNAS

Hughes Network Systems (Hughes) has filed a petition requesting a declaratory ruling revising the Commission's policies with respect to preemption of local zoning regulation of satellite earth stations as codified at 47 CFR § 25.104. For purposes of reference only, this petition has been assigned File Number 45-DSS-MISC-93. Specifically, Hughes requests the Commission to declare that any restriction on installation of a satellite antenna two meters in diameter or smaller in a commercial or industrial zone is preempted as *per se* discriminatory and unreasonable, and that the requirement in the existing policy that a party exhaust its legal remedies as a condition to seeking Commission relief be revised and replaced by procedures to initiate Commission review of zoning controversies in the first instance. Hughes asserts that it is experiencing significant problems with local zoning regulation of VSAT systems in commercial areas. We seek comments on Hughes' petition.

In addition, we seek to update the record compiled in response to the petition for declaratory relief filed by the Satellite Broadcasting and Communications Association of America (SBCA), DA 91-577, Public Notice, 6 FCC Rcd 2600 (1991). SBCA's petition requests the Commission to make specific findings concerning abusive zoning practices, requests a more definitive interpretation of Section 25.104 and requests the Commission to establish an administrative enforcement scheme to address zoning complaints.

Finally, we seek comments on what action we should take as a result of the decision by the United States Court of Appeals for the Second Circuit reversing the Commission's Order preempting the zoning ordinance of the Town of Deerfield, New York. The court held that the Commission did not have the authority to refuse to intervene in zoning disputes until other legal remedies had been exhausted and then review, alter or prevent enforcement of court judgments.

Comments or petitions filed in response to any or all of these matters should be filed on or before **July 12, 1993** and replies should be filed on or before **August 16, 1993.** Copies of these documents can be obtained in the Public Reference Room, Domestic Facilities Division, Room 6220, 2025 M Street, N.W., Washington, D.C. or by contacting International Transcription Service, 202-857-3800. For further information, contact Rosalee Chiara, (202) 634-1781.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-170

In re Applications of

TRACY A. MOORE d/b/a GIFFORD ORION BROADCASTING, LTD. — File No. BPH-880308MK

JOHN E. MORRIS and LAWRENCE R. BAKER d/b/a MORBAK COMMUNICATIONS — File No. BPH-880309ME

AMERIWAVE, INC. — File No. BPH-880309MF

JIANT BROADCASTING COMPANY, INC. — File No. BPH-880310ME

MOLLY BEARD BROADCASTING, LTD. — File No. BPH-880310MS

For Construction Permit for a New FM Station on Channel 234A, Gifford, Florida

MEMORANDUM OPINION AND ORDER

Adopted: May 5, 1993; Released: May 19, 1993

By the Review Board: MARINO (Chairman), BLUMENTHAL and GREENE.

1. By *Order*, FCC 93R-11, released April 12, 1993, we asked the Commission's Mass Media Bureau to file a supplemental brief on its opposition to a Joint Request for Approval of Settlement Agreements filed by the above-captioned applicants on February 8, 1993.[1] The Bureau filed its Further Comments on April 22, 1993.[2] The Joint Petitioners filed replies to the Bureau's Further Comments (and to the *amicus* brief).

BACKGROUND

2. As our *Order* explained, an earlier version of the settlement agreement would have made Ameriwave the (nominal) permittee, but the agreement also (1) sold a 49% interest in the permittee to James Pagano (d/b/a "Media 5"); and (2) contained a "put/call" option in which Ameriwave could forefend the acquisition of the remaining 51% of the licensee only by remitting to Media 5 an amount equal to 250% of all sums expended by Media 5. Faced with Bureau opposition to that provision, the revised settlement agreement now before us reduces that "call" option to 150%,[3] a figure the settling parties contend has been approved in prior settlements with similar "put/call" options. The Bureau did acknowledge in its initial opposition and in its instant supplement[4]:

> Given the reduction [from 250% to 150%], the applicants submit that the Ameriwave/Pagano/Media 5 proposal is now akin to the one approved by the Commission in *Lamar Communications, Inc.*, 6 FCC Rcd 7022 (1991). There, the Commission approved a global settlement containing reciprocal options similar to those given Ameriwave and Media 5.

3. Furthermore, the Bureau had initially advised that the settlement agreement contained an additional "lease management" provision in which Media 5 "would supply

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[1] Various amendments to that Joint Request were filed by several parties in the ensuing weeks. *See Order* at para. 1.

[2] Also before the Board is a Statement Of *Amici Curiae* Suggesting Certification Of Issues To The Full Commission, filed on April 22, 1993, jointly by Media Access Project and Telecommunications Research and Action Center in which the *amici* oppose any approval of the subject settlement as "a cynical pattern of evasion" of the policies established by the Commission in *Rebecca Radio of Marco*, 5 FCC Rcd 937, *recon. denied*, 5 FCC Rcd 2913 (1990), as well as in *Proposals to Reform the Comparative Hearing Process to Expedite the Resolution of Cases*, 6 FCC Rcd 157, 160 (1990), *clarified*, 6 FCC Rcd 3403 (1991), and in the Commission's earlier *Settlement Agremeents among Applicants for Construction Permits*, 6 FCC Rcd 85 (1990), *modified*, 6 FCC Rcd 2901 (1991). As an alternative to certification of this matter to the Commission under 47 CFR § 0.363(a), *amici* request that its pleading be considered as an opposition to the settlement before us. Inasmuch as *amici* have shown a strong interest in these matters before, *see, e.g., Settlement Agreements*, 6 FCC Rcd at 88 (Appendix), and because the Commission is often hospitable to *amicus* briefs from non-parties whose pleadings have been deemed helpful in considering perplexing issues, *see, e.g., Salt City Communications, Inc.*, 8 FCC Rcd 683, 687 (1993), we shall, pursuant to the alternate request, accept this pleading as an *amicus* brief and deny the Joint Opposition thereto filed May 4, 1993.

[3] *See* Further Bureau Comments at 3. Moreover (*id.*, at n.1):

> Ameriwave's present shareholders would also be obligated to buy from Media all equipment leased by Media to Ameriwave for an amount equal to 250% of the original purchase price of the equipment.

[4] *See id.*, at 4.

to Ameriwave management services for a period of 5 years at a cost of $4,000 per month."[5] In its supplemental pleading, it maintains[6]:

> In opposing the settlement, the Bureau pointed out, *inter alia*, that the option held by Ameriwave's present shareholders was not truly reciprocal but illusory. *The cost of exercising the option appeared to be prohibitive and unrelated to any reasonable value the station may have at the time of exercise.* In addition, the Bureau opposed the Ameriwave/Beard settlement because the parties to those agreements did not establish that the amounts promised to [Molly] Beard were not in excess of Beard's legitimate and prudent expenses. Beard would receive consultancy fees even though there was no assurance that she would ever perform the duties specified.

4. Finally, the Bureau adverts to another settlement provision in which Ameriwave will pay Molly Beard, of her eponymous applicant, $60,000 over a two-year period for her "consultancy" services. The Bureau contends that this stipend exceeds Beard's actual application prosecution expenses.[7]

5. Yet, neither in its initial opposition nor in its supplemental pleading does the Bureau dispute that the "put/call" option, as now reduced to 150% of the sums expended by Media 5, is "akin" to a settlement approved by the full Commission in *Lamar Communications, Inc.*, 6 FCC Rcd 7022 (1991).[8] Likewise[9]:

> The Bureau also continues to object to the Ameriwave/Beard consulting agreement. In *Amendment of Section 73.3525 - Settlement Agreements*, 6 FCC Rcd 85, 87 and 91 n.56 (1990), the Commission stated that settling parties are required to submit ancillary agreements, such as consulting agreements, or certify that no such agreements exist. In evaluating such agreements, the Commission indicated that it would apply its pre-1982 policy. That policy calls for the Commission to evaluate consulting agreements to prevent manipulation of applicants or disguised payoffs.
>
> . . .
>
> In the instant case, the Ameriwave/Beard consultancy *is not unreasonable on its face in terms of monetary amount and duration. Compare Central Television, Inc.* ... Moreover, the manner of payment *is consistent with that deemed acceptable in the Colonial Heights, Tennessee, proceeding*, and Beard's broadcast background is similar to the background of the Colonial Heights consultant. *See Memorandum Opinion and Order*, 92M-91, released January 23, 1992.

But the Bureau's Further Comments go on to opine[10]:

> Nevertheless, the Bureau is not persuaded that the consultancy agreement is *bona fide*. Simply put, Beard's proposed services appear redundant and not likely to be used in light of Ameriwave's proposal to rely for management upon the principals of Media 5, including Pagano, who is claimed to have extensive broadcast experience in the Gifford market ... Indeed, the agreement does not obligate Beard to perform any services. Rather, Beard is obligated only to provide up to 87 hours a month. Considering all the surrounding circumstances, it appears that the money promised Beard in the consultancy agreement is part of the compensation she will receive for the dismissal of her application. Thus, Beard is in a position to be reimbursed substantially in excess of her actual expenses.

Finally, the Bureau notes that "Ameriwave also proposed to amend its application by withdrawing the integration commitment of its principals, which withdrawal was opposed by the Bureau."[11]

6. Withal, the Bureau continues to urge that the settlement agreement submitted to the Board be rejected as inconsistent with both *Rebecca Radio of Marco* and *Settlement Agreements* (*see supra* note 2), which the Bureau considers a part of a number of "actions taken by the Commission to discourage the filing of sham applications."[12]

7. Molly Beard, in her separate reply to the opposing comments, again cites *Lamar Communications*, notes that the Bureau finds her consultancy agreement "not unreasonable" on its face, and claims her services are not "redundant" but *bona fide*. In essence, it labels the Bureau's views speculative and inconsistent with the Bureau's support for a similar consultancy approved by an ALJ in Colonial Heights, Tennessee (*see supra* para. 5).

8. The other settling parties have filed a Joint Reply to the comments of the Bureau contending that "[t]he settlement and related agreements are each patterned on models expressly approved by the Commission in past cases."[13] The reply also relies heavily on *Lamar Communications*, distinguishes *Calhoun County Broadcasting Co.*, 57 RR 2d 641 (1985) and *Scott & Davis Enterprises, Inc.*, 54 RR 2d 868 (1985), because, it submits, the new permit in each of those cases would have been assigned forthwith,[14] and insist that a rejection of their

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[5] *Id.*, at 3.

[6] *Id.* (emphasis added).

[7] *Id.* (footnote omitted). However, the same may possibly be said, we suppose, of virtually any lucrative "consultancy" agreement attending a comparative hearing settlement. *Cf. Central Television, Inc.*, 834 F.2d 186 (D.C. Cir. 1987).

[8] *See* Further Bureau Comments at 3-4.

[9] *Id.*, at 6-8 (emphasis added). Nonetheless, and as quoted from the Bureau's language in the inset of paragraph 3 in our text, it insists that the option to be held by Ameriwave (to repurchase the 49% of the stock for 150% of Media 5's expenditures) is "not truely reciprocal but illusory," even though Media 5 would also pay over to Ameriwave $4,000 per month for management services for 5 years. *See id.*, at 3; 4 n.3.

[10] *Id.*, at 8.

[11] *Id.*, at 3 n.2.

[12] *Id.*, at 5. (*But see Evansville Skywave, Inc.*, 7 FCC Rcd 1699, 1700 (1992)(Comm'n finds use of term "sham" confusing; use of the term "should be avoided").

[13] Joint Reply at ii.

[14] *See id.*, at 7-8.

proposed settlement based on a lack of any "rational analysis"[15] by the Bureau would constitute an agency action impermissibly retroactive, and thus capricious.[16]

DISCUSSION

9. Our request for supplemental pleadings was premised on two faces of the same coin: *first*, this Board has no independent policymaking authority;[17] and *second*, the Board must hew to precedent established by the full Commission. Given the Bureau's apparent concession that a (150%) "put/call" option similar to the agreement before us was approved by the Commission in *Lamar Communications*, *supra*, and its acknowledgement that the Ameriwave/Beard consultancy was not unreasonable on its face in terms of amount or duration, the Board was constrained to seek a further explanation from the Bureau (as well as allowing the parties to respond) as to how and/or why this particular settlement should be rejected, bearing in mind the basal mandate of *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965), that similarly situated applicants must receive comparable treatment.

10. Intending no disrespect to the Commission (or any subordinate precedent), but more rather attuned to the agency's manifold efforts in recent years to keep its comparative hearing process free from some of the more egregious applicant abuses of the prior decade, we shall not approve in its entirety the settlement before us. Although we must concede that several of the discrete aspects of the proposed agreement have received, separately, the imprimatur of the Bureau, or an ALJ, or even the full Commission,[18] no case cited to us finds approval of a settlement containing a kindred concatenation of the multivarious terms found in this agreement. Taken altogether, the combination of terms identified by the Bureau and *amici* make it quite obvious to us that this is not a *bona fide* settlement designed to anoint Ameriwave as the true Gifford licensee, but an expedient crafted solely (1) to put the Gifford license in the possession of Media 5 at the soonest possible moment not barred by *Settlement Agreements*, *supra* note 2[19] ; and (2) to disingenuously evade the monetary limits of 47 CFR § 73.3525. Consequently, and though the parties have attempted to simulate a composite agreement that closely skirts previously approved settlements, we do not believe that the Commission intended this appreciable a degree of contrived circumvention of its more recent anti-abuse policies. *Cf. Atlantic Radio Communications*, 7 FCC Rcd 5105 (1992)(settlement, supported by Mass Media Bureau and adjudged consistent with precedent by ALJ and Board, vacated because of agency fear that approval might undermine "the integrity of our rules generally"), *recon. denied*, 8 FCC Rcd 1311 (1993). Without gainsaying some apparent unevenness by the bureaucracy in the administration of the Commission's freshly revamped settlement policies,[20] but taking a cue from *Atlantic*, we cannot see how unqualified approval of the instant settlement would pose *less* of a threat to the "integrity" of the Commission's broadcast licensing policies than the situations in *Atlantic* or *Rebecca Radio*. *See generally also Settlement Agreements*, *supra* note 2. Should the Commission disagree, prompt rectification is always available. *See* 47 CFR §§ 1.115; 1.117.

11. ACCORDINGLY, IT IS ORDERED, That the Joint Request for Approval of Settlement Agreements, filed on February 8, 1993 and supplemented on March 2, 1993, by Gifford Orion Broadcasting, Ltd., Morbak Communications, Ameriwave, Inc., Jiant Broadcasting Company, Inc., and Molly Beard Broadcasting, Ltd. IS DENIED; that the Joint Opposition to the *Amicus Curiae*, filed on May 4, 1993, IS DENIED; and that the Petition for Leave to Amend filed on February 8, 1993, and supplemented March 2, 1993 by Ameriwave, Inc. IS DENIED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

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[15] *See id.*, at ii.

[16] *See id.*, at 2, 5-6.5

[17] *See, e.g, Lizardo-Franich Partnership*, 7 FCC Rcd 6256 (Rev. Bd. 1992).

[18] For example, the Bureau complains that under the settlement agreement Ameriwave proposes to abandon its ownership/management integration proposals (*see supra* para. 5). Though it is true that the Commission expressly altered its policies to prohibit the abandonment of "integration" pledge(s) of an applicant that receives a broadcast construction permit as the result of a settlement, *see Proposals to Reform*, *supra*, 6 FCC Rcd at 159-160 (abrogating "*Ruarch*" policy), such "integration" abandonment has been permitted nonetheless in several recent settlement cases. *See generally WCVQ, Inc.*, FCC 92I-087 (OGC November 17, 1992)(citing *Kevin Potter*, FCC 92I-065 (OGC July 20, 1992)). From a reading of these two cases, it is plain that the newer policy on "integration" pledge abandonment is developing, case-by-case, under delegated authority. We are confident, however, that any necessary reconciliation and/or clarification of the abandonment policy will emerge in due course.

[19] *See* Further Bureau Comments at 5.

[20] *Compare, e.g., Kevin Potter*, 6 FCC Rcd 7278, 7281 (Rev. Bd. 1991)(questioning earnestness of Potter's "integration" pledge)(statement concurring *dubitante) with Kevin Potter*, *supra* note 18 (permitting abandonment of that solemn pledge upon settlement).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-406

In re Applications of

PENSACOLA RADIO PARTNERS — File No. BPH-880323MJ

VERNON C. FLOYD — File No. BPH-880324MK

MIRACLE RADIO, INC. — File No. BPH-880324NU

David Earl Hoxeng d/b/a ADX COMMUNICATIONS OF PENSACOLA — File No. BPH-880324OJ

For Construction Permit for a New FM Station on Channel 254C2 in Pensacola, Florida

MEMORANDUM OPINION AND ORDER

Adopted: May 4, 1993; Released: May 19, 1993

By the Review Board: MARINO (Chairman), BLUMENTHAL, and GREENE.

1. The Review Board has under consideration an Appeal as of right[1] filed March 12, 1993 by Miracle Radio, Inc. from Administrative Law Judge John M. Frysiak's interlocutory ruling requiring the production of six documents over an objection based on privilege. The competing parties jointly filed an opposition on March 24, 1993, which, in turn, generated an unauthorized reply by Miracle Radio.[2] For the reasons set forth below, we shall deny the appeal.

2. The documents in question, which were produced only after the close of record and nearly two years after a pertinent document production request.[3] consist in main part of communications that occurred in 1991 between Miracle Radio's sole non-voting shareholder, Fredric G. Levin, and John Monroe, an attorney in Levin's law firm, requesting that Monroe prepare documentation to secure loans Levin made to the applicant. Appeal, Exhs. 1-6. The documents were submitted to the ALJ for an *in camera* inspection following Levin's testimony at a January 27, 1993 hearing session on an issue to determine whether Miracle Radio had intentionally concealed documents sought in discovery.[4] Levin had made reference at hearing to a promissory note, Uniform Commercial Code financing statement, and security agreement, but none of those documents had previously been produced to the opposing parties during discovery. When alerted on cross-examination that the production order was continuing in nature, Levin agreed to furnish those documents and related correspondence to counsel. Tr. 1646, 1650. The instant submissions in redacted form, along with related correspondence and an accompanying affidavit by Levin identifying the documents, were circulated among counsel and the presiding ALJ on February 4, 1993. Thereafter, on a joint motion to reopen the record, the ALJ admitted into evidence all documents except the submissions now in dispute, acquiescing to arguments made by the parties that the material was relevant to the involvement of the non-voting shareholder in corporate affairs and to the concealment issue. *Memorandum Opinion and Order*, FCC 93M-91, released March 5, 1993. He rejected Miracle Radio's claims of attorney-client privilege and work product immunity with respect to the instant material, concluding that the material relates to the other documents already admitted into evidence, has a bearing on Levin's involvement and the issue of control, and is unaccompanied with any explanation as to why the documents could not have been identified earlier. *Id.* Miracle Radio's appeal ensued.

3. In charging error, Miracle Radio's appeal primarily relies on the nature of the documents themselves, contending that they are "straightforward attorney-client material," *i.e.*, legal memoranda from Levin to Monroe soliciting legal assistance or from Monroe to Levin conveying legal advice, as well as subject to the work product doctrine. Appeal at 2-3. The joint opposition does not dispute that argument, but contends that Miracle Radio's privilege claims have been waived because (1) Miracle Radio failed to assert the privilege in a timely fashion; and (2) Levin's release of the documents to the applicant constituted a disclosure of the material to a third party because the applicant is the potential "defendant" in any litigation by Levin over non-payment of the loans.

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[1] *See* 47 CFR § 1.301(a)(2). That rule provides that "if the presiding officer's ruling requires ... the production of documents, over objection based on a claim of privilege, the ruling on the claim of privilege is appealable as a matter of right."

[2] Replies are not permitted unless the Commission specifically requests them. 47 CFR § 1.301(c)(7). Miracle Radio's April 2, 1993 pleading, styled an "Opposition to Request for Additional Proceedings," objects to a request in the joint opposition that the Board direct the ALJ to reopen the record and permit the taking of additional testimony. Both Miracle Radio's "opposition" and the joint opposition's request will be disregarded. Leaving aside the procedural defect of combining requests for action in a responsive pleading, *see* 47 CFR § 1.44, the relief requested is beyond the scope of this appeal. Section 1.243 of the Commission rules, 47 CFR § 1.243, confers upon the presiding ALJ, not the Board, the initial authority to rule upon questions of evidence and conjecture on future rulings of the ALJ is premature.

[3] Document Request No. 8: "All documents that relate to any part, present or future pledge, mortgage, security interest, judgment lien, *lis pendens* or other encumbrance..." *See* Joint Opposition at n.1.

[4] Copies served on the Board were not redacted. All other copies were masked except for identifying headings.

DISCUSSION

4. The attorney-client privilege protects confidential communications between client and attorney when obtaining legal advice. Its object is to "promote freedom of consultation between client and lawyer by eliminating the fear of subsequent compelled legal disclosure of confidential communications." *U.S. v. Suarez*, 820 F. 2d 1158, 1160 (11th Cir. 1987). The work product doctrine, in turn, protects an attorney's "mental impressions, opinions or legal theories concerning specific litigation," absent special circumstances. *Hickman v. Taylor*, 329 U.S. 495, 511, 67 S. Ct. 385, 393, 91 L. Ed. 451 (1947). That a document may be relevant to an issue does not extinguish a properly asserted privilege, *see RKO General, Inc. (KHJ-TV)*, 97 FCC 2d 423, 424-425 (1984); *Welch Communications, Inc.*, 5 FCC Rcd 7066, 7067 (Rev. Bd. 1990). Because both privileges act to impede and obscure the search for truth, however, they are not "favored evidentiary concept[s] in the law" and are narrowly construed. *U.S. v. Suarez*, 820 F.2d at 1160. Moreover, "[t]he party seeking to assert the attorney-client privilege or the work product doctrine as a bar to discovery has the burden of establishing that either or both is applicable," *BarclaysAmerican Corp. v. Kane*, 746 F.2d 653, 656 (10th Cir. 1984), and a waiver of privilege may be effected by implication. *See Eureka Financial v. Hartford Acc. & Indem.*, 136 F.R.D. 179, 184 (E.D. Cal. 1991).

5. In the instant proceeding, we find that Miracle Radio waived both the asserted attorney-client and work product privileges by its two-year delay in identifying the documents and asserting the privileges without explanation.[5] Certain courts have held that untimely and improper assertions of privilege, *per se*, serve as a waiver of the privilege asserted. *See Peat, Marwick, Mitchell & Co. v. West*, 748 F.2d 540 (10th Cir. 1984); *Davis v. Fendler*, 650 F.2d 1154, 1160 (9th Cir. 1981); *Carte Blanche (Singapore) v. Diners Club Intern.*, 130 F.R.D. 28 (S.D.N.Y. 1990). In *Peat, Marwick, Mitchell & Co*, the court cautioned (at 748 F.2d at 542):

> A party seeking to assert the privilege must make a clear showing that it applies.... It is not enough that a document would have been privileged if an adequate and timely showing had been made. The applicability of the privilege turns on the adequacy and timeliness of the showing as well as on the nature of the document.

In contrast, other decisional bodies have advocated that an "analysis of whether a waiver of important privileges has been effected should be analyzed under the inadvertent waiver standard on a *case-by-case basis*." *Eureka*, 136 F.R.D. at 183 (emphasis added). The criteria employed in *Eureka* were previously set forth in *Hartford Fire Ins. Co. v. Garvey*, 109 F.R.D. 323, 332 (N.D. Cal. 1985): (1) the reasonableness of the precautions to prevent inadvertent disclosure; (2) the time taken to rectify the error; (3) the scope of discovery; (4) the extent of the disclosure; and (5) the issue of fairness.

6. Applying those criteria to this proceeding, we note initially that Miracle Radio proffered no explanation why the documents were not identified earlier and the privilege asserted in a timely fashion. Levin's affidavit simply states: "[w]hen I returned to the office [following his January 23 testimony], I got John Monroe's file and I enclose copies of the same." Appeal, Exh. 11. That explanation was patently inadequate in light of the gross lack of diligence in producing the documents. As noted in the joint opposition at n.2, Levin was the originator of some of the documents and the recipient of others and therefore must have previously seen and been aware of the documents. Moreover, Levin is a lawyer and presumptively was familiar with discovery processes. *Id.* Indeed, the joint opposition at n.5 adverts to a promise by Miracle Radio on November 2, 1992 that it would review its document production for completeness. Nowhere was there any explanation as to why the search was not commenced earlier and the documents found. Hence, Miracle Radio failed to take reasonable precautions to ensure that its privilege claims would be preserved. Second, Miracle Radio made no attempt to rectify its delinquency in a timely fashion, waiting instead until the close of the case before disclosing the existence of the documents. Third, the scope of discovery was very specific and placed no unreasonable burden on the applicant to comply with the request. Fourth, Miracle Radio's apathy in complying with discovery obstructed the parties' efforts to litigate this case in an orderly and efficient manner because even the non-disputed documents could only be included in the record by motion to reopen the record. Finally, the opposing parties have been potentially prejudiced in fully litigating this proceeding by Miracle Radio's procrastination. The existence of the material was disclosed only after the issue had been tried to determine whether Miracle Radio had intentionally concealed documents sought in discovery, and after the ALJ had set a date for proposed findings.

7. Thus, even applying the stricter *Eureka* test, there is an adequate basis to affirm the ALJ's ruling.[6] "If the privilege is worth protecting, a litigant must be prepared to expend some time to justify the assertion of the privilege." *Eureka*, 136 F.R.D. at 183. In light of our ruling, we offer no opinion on the novel argument whether Levin's disclosure of the material to the applicant constituted a waiver.

8. ACCORDINGLY, IT IS ORDERED, That the appeal filed by Miracle Radio, Inc. IS DENIED.

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[5] To the extent the ALJ's ruling was based on the relevance of the instant documents to an issue or to other non-disputed documents, that was error. *See Welch*, 5 FCC Rcd at 7067 ¶ 6. The documents do not on their face suggest the commission of a crime or fraud. *See Welch Communications, Inc.*, 4 FCC Rcd 3979, 3982 n.2 (Rev. Bd. 1989) on doctrine of "exception."

[6] *Compare Metroplex Communications, Inc.*, 2 FCC Rcd 4513 (Rev. Bd. 1987). In *Metroplex*, the Board granted an appeal from a ruling that an applicant had waived its privileges by failing to assert them until after objections to the production of documents on substantive grounds were rejected. We held that the applicant had no notice by prior Commission precedent that waiver could be effected by deferring its privilege claims until a ruling on the merits. Subsequently, in *LNJ Communications*, 3 FCC Rcd 4411 (Rev. Bd. 1988), we noted with approval that the problem of notice found in *Metroplex* has been obviated by prehearing orders of the ALJs setting forth detailed procedures designed to ensure that privilege claims are raised in a timely and efficient manner.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-375

In re Applications of

FOX TELEVISION STATIONS, INC. File No. BRCT-880801LW

For Renewal of License of Station
KTTV(TV) Los Angeles, California

and

RAINBOW BROADCASTING, INC. File No. BRCT-881101KH

For Construction Permit for a New
Commercial Television Station
in Los Angeles, California

MEMORANDUM OPINION AND ORDER

Adopted: May 5, 1993; Released: May 19, 1993

By the Review Board: MARINO (Chairman), BLUMENTHAL and GREENE.

1. The Board has before it a Petition For Reconsideration of its *Decision*[1] in the above-captioned proceeding filed by Rainbow on April 9, 1993. It also has Oppositions thereto filed by Fox on April 22, 1993[2] and the Commission's Mass Media Bureau filed on that same date. On April 29, 1993, Rainbow filed a Reply to those two Opposition pleadings.

2. It is well-settled law that reconsideration does not lie merely to debate once again matters which have been fully deliberated and decided. *WWIZ, Inc.*, 37 FCC 685 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1964), *cert. denied*, 383 U.S. 967 (1966). Although Rainbow shows itself fully aware of that elemental proposition,[3] its petition nonetheless rehearses its arguments on the two vital holdings of our *Decision:* (1) it argues that the Board ignored relevant factors in affirming the *Initial Decision* as to its own financial disqualification; and (2) it argues that the Board ignored as well the *prima facie* evidence it presented to warrant a remand and further hearings on Fox's conduct.

3. For its part, and (as in its pending Application For Review, *see supra* note 2) though it disagrees with several of the Board's modifications of the *Initial Decision*, Fox declares[4]:

> Like the unsuccessful petitioners in *WWIZ, Inc.*, 37 FCC 685, 686 (1964), the very case on which it purports to rely (*see* Petition at 1), "[n]othing in [Rainbow's] Petition suggests any new theory of this case or any new reason for a different interpretation of the evidence of record." Indeed, stripped of rhetoric, the Petition is merely a rehash of a "version of the facts [that] was considered and rejected" by the Review Board. *Id.* Far from demonstrating error on the part of the Board, the Petition simply highlights Rainbow's *own* misstatements of the applicable legal standards, its *own* indiscriminate reliance on extra-record materials, and its *own* studious efforts to "ignore" unfavorable facts and law. Ultimately, Rainbow's complaint is not that the Board "ignored" Rainbow's arguments, but rather that, upon due consideration, it rejected them.

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[1] *Fox Television Stations, Inc.*, FCC 93R-9, released March 10, 1993. Therein the Board affirmed, with several ultimately nondecisional modifications, the *Initial Decision*, 7 FCC Rcd 3801 (ALJ 1992), which held (1) that the licensee was entitled to a dispositive "renewal expectancy" for its operation of KTTV-TV, while (2) Rainbow had, in any event, not met the Commission's standard of "reasonable assurance" of a firm financial commitment to cover construction and initial operation of a new Los Angeles television station.

[2] Concurrent with its Opposition, Fox filed a pleading it styles "Motion For Referral of Petition For Reconsideration," therein requesting the Board to refer Rainbow's reconsideration petition to the Commission because, in lieu of filing its own reconsideration petition with the Board, Fox duly exercised its option, under 47 CFR § 1.115, to file a ("limited") Application For Review with the Commission on April 9, 1993. Rainbow filed an Opposition to Fox's Motion on April 28, 1993. Since it is the Commission's routine practice to defer action on review applications directed to Board decisions until the disposition of any pending reconsideration petitions, *see, e.g., Isis Broadcasting Group*, FCC 92I-080, released October 2, 1992 (citing 47 CFR § 1.104(c)); *Richardson Broadcasting Group*, FCC 90I-111, released October 16, 1990, we shall deny Fox's motion, as it sets forth no particular basis for special treatment. We do commend for Fox's future reference Section 1.104(c) of the Commission's Rules, in the event that it was unaware of that provision which reads:

> If in any matter one party files a petition for reconsideration and a second party files an application for review, the Commission will withhold action on the application for review until final action has been taken on the petition for reconsideration.

[3] *See* Petition at 1 (footnote omitted), where Rainbow states:

> Because reconsideration is appropriate primarily where the petitioner shows a material omission in the original decision or where there are new facts, Rainbow does not here seek reconsideration of every material error contained in the Board's lengthy *Decision*. When and if required, Rainbow will seek further review of this case from the Commission, or other tribunals, at the appropriate time.

[4] Fox Opposition at 2 (original emphasis).

The Bureau's opposition is similarly grounded ("[t]he bulk of Rainbow's arguments are merely its version of the facts, which were previously considered and rejected by the Board.").[5]

DISCUSSION

4. *Rainbow's Financial Disqualification.* Just as it did before the ALJ and its exceptions to the Board, Rainbow here relies upon the same cases and argues again that, even if its written "understanding" with the Bank of America lacked all vital loan terms, it had an "oral" understanding with a bank employee as to the specific terms of a $10 million loan, and that the Board "ignored" this factor. The Board did not, *see Decision* at paras. 81-83 & n.156, 84 n. 161, 93 & n.177, any more than did the ALJ. *See Initial Decision,* 7 FCC Rcd 3801 (1992), at paras. 155-172, 208-212. Rainbow's contentions were considered thoroughly and found to be specious. Rainbow's petition also reinvokes *Las Vegas Valley Broadcasting Co. v. FCC,* 589 F.2d 594 (D.C. Cir. 1978) and *Multistate Communications, Inc, v. FCC,* 590 F.2d 1117 (D.C. Cir. 1978), *cert. denied,* 447 U.S. 959 (1979). Our *Decision* expressly discussed the inapplicability of those two cases to Rainbow's situation, *see id.,* paras. 91-93, and nothing can be gained by repetending that discussion. *See also* Bureau Opposition at 2-3; Fox Opposition at 17 & n.18.

5. Rainbow also contends that "[t]he Decision further ignores the clear implications of Fox owner Rupert Murdoch's interference in 1990 with Rainbow's commitment from the Bank of America."[6] Once more, Rainbow tortures the actual record. Our *Decision* expressly discussed this allegation of personal "interference" by Murdoch, *see id.,* paras. 96-98, but observed that Rainbow itself conceded that it had insufficient evidence to support its own speculation (citing Tr. of Oral Arg. at 1597). *See also* Fox Opposition at 12-16. Rainbow has provided no new facts to support its "interference" conjecture.

6. Whereas Rainbow expends nearly seventeen pages reiterating the financial issue arguments previously rejected by the ALJ and the Board, we believe that its *real* grievance is exposed in its lament that[7]:

> [n]either the Board nor the Commission has ever adequately explained its irrational insistence that an applicant obtain the tentative "terms and conditions" of a future loan in view of the well recognized fact that these are virtually meaningless, because a future loan will be approved and made only if the loan applicant meets the bank's lending criteria *at the time of the loan application. See Multi-State, supra,* 590 F.2d at 1119.

The gravamen here is, unabashedly, a frontal assault on the Commission's current financial standard, *compare Decision,* paras. 86-90, and its basic policy argument is simply beyond the Board's delegated purview. Having considered all of its request for reconsideration of our affirmance of the ALJ's disqualification of Rainbow under the financial issue(s), we reject its unpersuasive pleadings.

7. *Conduct of Fox.* Rainbow likewise claims that the Board "ignored" evidence of the licensee's misconduct in its review of the *Initial Decision.*[8] We regret to say that this is a most patent misrepresentation, since (1) paras. 37-68 of our *Decision* dealt extensively with what the Board (but not the ALJ or the Mass Media Bureau) found to be a failure of full compliance with certain Commission rules and policies by Fox; and (2) we appreciably modified the *Initial Decision* by reducing the weight of the "renewal expectancy" awarded to Fox by the ALJ. *See Decision,* paras. 73-74, 100.

8. It is evident from the whole of Rainbow's petition that it has added nothing not fully considered by the Board, but merely wishes Fox to be stripped utterly of any "renewal expectancy" for the several acts of licensee noncompliance perceived by the Board. (And some of those, we frankly acknowledge, will be seen by others as rather close calls.). In our view, Rainbow's petition illuminates no errors of fact or law that could redound in *its* favor, and we shall resist its spirited entreaty to repetitive argumentation. *WWIZ, Inc., supra.*[9] This licensing renewal proceeding commenced years ago. While we do not apologize for the distensive scrutiny afforded to this multifaceted adjudication, the parties and the public do have a public interest in seeing this proceeding move forward.[10]

9. ACCORDINGLY, IT IS ORDERED, That the Motion for Referral of Petition for Reconsideration, filed by Fox Television Stations Inc. on April 22, 1993 IS DENIED; and that the Petition for Reconsideration filed by Rainbow Broadcasting, Inc. on April 9, 1993 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

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[5] Bureau Opposition at 2.

[6] Petition at 5.

[7] *Id.,* at 10 n.15 (original emphasis).

[8] *Id.,* at 17.

[9] The Board is acutely aware, as Rainbow accurately notes (Petition at 7 n.12), that the court has demanded that the Commission look for fire when it is shown a good deal of smoke. *Citizens for Jazz on WRVR v. FCC,* 775 F.2d 392 (D.C. Cir. 1985). But as the Board has remarked before, we are (as we review certain pleadings) put in mind of President Kennedy's riposte that sometimes, behind the smoke, is a "smoke-making machine." Rainbow's instant petition more than affirms the late president's very keen aphorism.

[10] The *Initial Decision* in this case encompassed 217 paragraphs. The Board's *Decision* on the exceptions ran 103 paragraphs (accompanied by 190 footnotes). Rainbow's arguments have been fully contemplated, to the best of the ALJ's and the Board's earnestness and competency. Rainbow, too, must move forward, *see supra* note 3.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company — File No. I-T-C-93-093

Application for Authorization Under Section 214 of the Communications Act of 1934, as Amended, to Acquire and Operate Capacity in a Digital Submarine Cable System Between the United Kingdom and Spain

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

ORDER AND AUTHORIZATION

Adopted: May 7, 1993; **Released: May 19, 1993**

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed by American Telephone and Telegraph Company (AT&T)[1] pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS ORDERED that application File No. I-T-C-93-093 IS GRANTED and AT&T is authorized to:

a. acquire and operate half-interests in 4 jointly-assigned Minimum Investment Units (MIUs)[2] of capacity in the U.K.-Spain 4 cable system;[3]

b. lease appropriate extension facilities; and

c. activate capacity in the U.K.-Spain 4 cable system and the aforementioned extension facilities for the provision of its authorized telecommunications services to its certificated points.

2. This order is issued pursuant to Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*See* Section 1.4(b)(2)).

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[1] AT&T's wholly-owned subsidiary, Transpacific Communications, Inc., will own portions of the U.K.-Spain 4 Cable System on behalf of AT&T.

[2] A MIU is defined as a 2.048 Mbit/s digital bit stream (2 Mbit/s) and consists of two half interests which are assigned to two correspondents respectivley for joint working. AT&T's initial share of the capital cost for 4 jointly-assigned MIUs is $261,800 plus $10,000 in interest during construction.

[3] The U.K.-Spain 4 Cable System, co-owned by thirteen parties including AT&T and two other U.S. carriers, extends between Goonhilly, United Kingdom and Rodiles, Spain. As a party to the Construction and Maintenance Agreement, AT&T's current percentage ownership interest in the U.K.-Spain 4 Cable System is 0.6211%. At present, the half-MIU cost is $65,450 plus interest during construction, but, when the cable system is fully subscribed, the half-MIU cost will be $42,500 plus interest during construction. The total capacity of this cable is 504 MIUs.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. ITC-93-104

Application for authority to make available to Telefonica de Espana, Teleglobe Canada, Cable and Wireless plc., Sprint Communications Company Limited Partnership, and MCI International, Inc. facilities in the Transcaribbean Cable System.

ORDER AND AUTHORIZATION

Adopted: May 7, 1993; Released: May 19, 1993

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that grant of the application is required by the public convenience and necessity.

2. Accordingly, IT IS ORDERED that application File No. ITC-93-104 IS GRANTED, and American Telephone and Telegraph Company (AT&T) is authorized to:

a. make available to Telefonica de Espana, on an Indefeasible Right of User (IRU) basis, AT&T's half-interests in 30 Minimum Assignable Units of Ownership (MAUOs) in Subsegments G1 and G2 (Puerto Rico - Dominican Republic) of the Transcaribbean Cable System (TCS-1) jointly owned by AT&T and its correspondent in the Dominican Republic, Compania Dominicana de Telefonos C. por A. (CODETEL);

b. make available to Teleglobe Canada, on an IRU basis, AT&T's half-interests in 30 MAUOs in Subsegments F, G1, G2 and G3 (Florida - Jamaica) of TCS-1 jointly owned by AT&T and its correspondent in Jamaica, Jamaica International Telecommunications, Limited (JAMINTEL);

c. make available to Cable and Wireless plc., on an IRU basis, AT&T's half-interests in: 27 MAUOs in Subsegments G1 and G2 (Puerto Rico - Dominican Republic) of TCS-1 jointly owned by AT&T and its correspondent in the Dominican Republic, CODETEL; seven MAUOs in Segment F (Florida - Puerto Rico) and nine MAUOs in Segment G3 (Dominican Republic - Jamaica) of TCS-1, both jointly owned by AT&T and its correspondent in Jamaica, JAMINTEL;

d. make available to Sprint Communications Limited Partnership, on an IRU basis, AT&T's half-interests in 121 MAUOs in Subsegments G1C and G4 (Puerto Rico - Colombia) of TCS-1 jointly owned by AT&T and its correspondent in Colombia, Empresa Nacional de Telecomunicaciones (TELECOM); and

e. make available to MCI International, Inc. on an IRU basis, AT&T's half-interests in 30 MAUOs in Subsegments G1D and G2 (Puerto Rico - Dominican Republic) of TCS-1 jointly owned by AT&T and its correspondent in Haiti, Teleco d'Haiti (TDH).

3. Nothing in this order shall be construed as superseding any of the conditions set forth in any previous Commission Order dealing with the TCS-1 cable system.

4. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of this Order's public notice date (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AGA GAS, INC.
Complainant,

v. File No. E-93-071

MCI TELECOMMUNICATIONS
CORPORATION,
Defendant.

ORDER

Adopted: May 11, 1993; Released: May 19, 1993

By the Deputy Chief (Operations), Enforcement Division, Common Carrier Bureau:

1. On March 11, 1993, AGA Gas, Inc. (AGA) filed the above-captioned formal complaint against MCI Telecommunications Corporation (MCI), alleging, among other things, that AGA had been harmed by MCI as a result of long distance toll fraud. On April 27, 1993, however, AGA filed a motion requesting dismissal of its complaint with prejudice, stating that the parties had resolved all disputes with respect to the matters encompassed in the complaint.

2. We are satisfied that withdrawal of the complaint will serve the public interest by eliminating the need for further litigation and the expenditures of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated under Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the AGA's Motion to Dismiss Complaint IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE, and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 91-62

In the Matter of

Amendment of Part 90.69 of the
Commission's Rules and Regulations
Concerning Eligibility in the
Motion Picture Radio Service

MEMORANDUM OPINION AND ORDER

Adopted: May 3, 1993; Released: May 19, 1993

By the Commission:

I. INTRODUCTION

1. Before us are Petitions for Reconsideration of our *Report and Order* in PR Docket No. 91-62, 7 FCC Rcd 2718 (1992) (*"Report and Order"*), filed by Capital Cities/ABC, Inc. ("Cap Cities") and the Alliance of Motion Picture and Television Producers ("AMPTP").[1] For the reasons discussed below, we deny the Cap Cities' petition for reconsideration and grant in part AMPTP's petition for reconsideration.

II. BACKGROUND

2. In the *Report and Order* in PR Docket No. 91-62, 7 FCC Rcd 2718 (1992), we renamed the Motion Picture Radio Service (*see* Section 90.69) the Video Production Radio Service (VPRS) and expanded the eligibility for this service to include the various program distribution technologies developed since its inception. The VPRS continues to serve entities engaged in on-location film production for motion picture theater distribution but now includes (1) individuals involved in the videotaping or filming of programs produced for final distribution to television, cable, or other mass distribution outlets;[2] (2) entities producing educational or training films not produced for movie theater, television or cable distribution outlets; and (3) individuals providing supporting services that facilitate program production by VPRS eligibles.

Petitions

3. In its petition for reconsideration, Cap Cities argues that the Commission should permit itinerant videotape program producers to employ the VPRS to coordinate the taping of an event without regard to whether the taped material is to be transmitted to the public more than 48 hours after the event. It argues that because itinerant producers operating outside their service areas are secondary to local broadcasters and cablecasters in the use of Part 74 and Part 78 frequencies, itinerant producers have a particular need for VPRS spectrum for on-site production coordination.[3]

4. Cap Cities also requests clarification of the *Report and Order's* limitation that prohibits television and cable entities from using the VPRS to coordinate the *live transmission* of an event. Cap Cities interprets this to preclude the use of the VPRS for *live* production coordination of an event but to permit use of the VPRS for *advance* production coordination of an event, *e.g.*, for set up activities, including pulling and checking cable, microphones and cameras, regardless of whether the event is transmitted to the public live or taped for delayed transmission.[4]

5. AMPTP, in its petition for reconsideration, argues that eligibility for individuals providing supporting services should be limited to "production-oriented" services and should not include short-term, *de minimis* support services (*e.g.*, the provision of sandwiches for production companies).[5] It also requests that eligible entities be defined more precisely in the rule to include producers of "music videos" and "commercials."[6] Finally, AMPTP requests that the name of the service be changed to "Motion Picture Production Radio Service," contending that the name of the service was changed in the *Report and Order* without notice or opportunity to comment.[7]

III. DISCUSSION

6. AMPTP contends that the NPRM did not propose to change the name of the private radio service and that it was done without notice or request for comment.[8] AMPTP argues that the term "video production" eviscerates the distinction between filming or movies and video taping of television programs since "video" could cover taped events and television programs and exclude movies and television programs recorded on film.[9] SIRSA, at AMPTP's direction,

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[1] An Opposition was filed by the Special Industrial Service Radio Service Association, Inc. ("SIRSA"), and a Reply to Opposition to Petition for Reconsideration was filed by Cap Cities.

[2] Section 90.69(a) prohibits television or cable entities that are eligible to be licensed under Part 74 of the rules to use the VPRS (1) to transmit programming, (2) to coordinate the live transmission of an event, or (3) to coordinate the taping of an event, where the taped material is to be transmitted to the public within 48 hours. 7 FCC Rcd at 2720. *See* 47 C.F.R. Parts 74 and 78. Part 74 governs experimental, auxiliary broadcast, and other program distribution frequencies for local television broadcast stations operating under Part 73.

[3] Cap Cities Petition for Reconsideration at 1, 4-5.

[4] Cap Cities Reply to Opposition to Petition for Reconsideration at 3.

[5] AMPTP Petition for Reconsideration at 4-5, 7.

[6] *Id.* at 8.

[7] AMPTP originally requested that the service be renamed the "Motion Picture and Television Radio Service." AMPTP Petition for Reconsideration at 5-6. AMPTP later reconsidered and, with SIRSA, proposed that the service be renamed the "Motion Picture Production Radio Service." SIRSA Opposition at 7-8.

[8] AMPTP Petition for Reconsideration at 4-5.

[9] *Id.* at 4-5.

requests that the name proposed in AMPTP's reconsideration petition be withdrawn and that "Motion Picture Production Radio Service" be substituted.[10] SIRSA asserts that "Motion Picture Production Service" encompasses all forms of production of motion pictures, both film and television production, and reflects the purpose for which frequencies will be utilized without any bias toward the method of distribution of the production or medium on which production is recorded.[11]

7. Contrary to AMPTP's argument, we believe that the change in the name of this service was a "logical outgrowth" of the *Notice* and thus within its scope.[12] In this regard, we note that the *Notice* precipitated comments on the name of the proposed service, with one commenter arguing that it should be called the "Television and Motion Picture Radio Service" and another commenter contending that it should be called the "Motion Picture and Television Radio Service."[13] We conclude that the name should reflect all eligibles and should not indicate a bias toward any technology in particular. We will, therefore, rename the service the "Film and Video Production Radio Service (FVPRS)."[14]

8. We reject Cap Cities' request to lift the restriction adopted in the *Report and Order* barring cable or television entities from using the FVPRS where the event to be taped is transmitted to the public within 48 hours. The 48-hour restriction was adopted because Part 73 and Part 76 eligibles have access to over 400 Part 74 auxiliary broadcast channels.[15] FVPRS spectrum, however, is very limited (*i.e.*, only 10 channels) and is shared with other eligibles, including Special Industrial and Relay Press eligibles. The 48-hour rule sought to minimize a source of potential congestion in the FVPRS by ensuring that the FVPRS is not used in connection with electronic news gathering or other broadcast activities. Furthermore, prior to the *Report and Order*, Part 73 and Part 76 eligibles had no access *at all* to the FVPRS. They may now employ FVPRS frequencies for on-location production with the only restriction that transmission to the public of the production being coordinated is delayed at least 48 hours after the event has occurred. In view of these considerations, we find it appropriate to retain the "48-hour restriction" for all television entities eligible for Part 74 channels.

9. We also reject Cap Cities' request that the use of the FVPRS be permitted for the *advance* coordination of an event, regardless of whether the event is to be transmitted live or taped for delayed transmission. Cap Cities argues that itinerant television and cable entities have the same needs for advance coordination and face the same broadcast auxiliary spectrum shortages whether the event being coordinated is transmitted live or taped for delayed transmission. Cap Cities has not presented any new arguments that convince us to reconsider the prohibition in the rules against television or cable entities using the FVPRS "to coordinate the *live transmission* of an event."[16] The FVPRS is *not* intended for the use of entities that are involved in the live transmission of an event. Thus, we maintain our prohibition against the use of the FVPRS for the coordination of an event, regardless of whether the production coordination takes place *in advance* of or *simultaneously* with the event, when the production is transmitted to the public less than 48 hours after the event has occurred.

10. AMPTP argues that clarifying language should be added to the new rule to ensure that third parties eligible to use the FVPRS have responsibilities directly relating to program production.[17] It adds that without such clarification, any entity producing *de minimis* and short-term services, such as the provision of sandwiches to a production company, could obtain a permanent license in the FVPRS.[18] On reconsideration, we agree that only entities providing technical services directly related to the production, videotaping or filming of on-location film and videotape productions should be eligible to use the FVPRS, and we will modify Section 90.69(a)(2) of our rules accordingly.

11. Finally, AMPTP requests in its Petition for Reconsideration that eligible entities be defined more precisely in the rule to include "music videos" and "commercials."[19] The *Report and Order* states that "'[p]roducers of . . . music videos and . . . commercials'...would be eligible to use the VPRS for on-location videotape and film production....We decline to enumerate the additional entities in the amended rule suggested by AMPTP."[20] AMPTP has provided no new arguments that would persuade us to change our original decision on reconsideration. In addition, as the *Report and Order* made clear, the eligibility for the service is not limited to those entities enumerated in the rule. Rather, the listed entities are purely examples of eligible programs or events.

IV. FINAL REGULATORY FLEXIBILITY ANALYSIS

12. We prepared a Final Regulatory Flexibility Analysis for the *Report and Order*.[21] None of the rules adopted in the instant *Memorandum Opinion and Order* modify the effect the instant proceeding has on small businesses.

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[10] SIRSA Opposition at 7-8.

[11] SIRSA states that the use of "video" in the radio service name is misleading since it describes only one of the media on which motion pictures can be recorded. *Id.* at 8-9.

[12] *See Public Service Commission of the District of Columbia v. FCC*, 906 F.2d 713 (D.C. Cir. 1990).

[13] 7 FCC Rcd at 2719 n.18.

[14] Since, on reconsideration, we are renaming the service the "Film and Video Production Radio Service," we will now change all references to "Motion Picture Radio Service" to "Film and Video Production Radio Service" in 47 CFR Part 90. Specifically, all references to "Motion Picture Radio Service" in the Part 90 Index and in Sections 90.59, 90.69(b), 90.71(c)(2), 90.73(d)(10), 90.273(b), 90.555(a), 90.617(b), 90.619(a)(3), and 90.619(b)(7)(iii) are changed to read "Film and Video Production Radio Service."

[15] Broadcast and cable entities may also use Part 90 Business Radio frequencies for on-location production.

[16] 7 FCC Rcd at 2720 (emphasis added).

[17] AMPTP Petition for Reconsideration at 6-7.

[18] *Id.* at 7. AMPTP's comments in response to the *Notice* sought to limit eligibility to entities providing "technical support services" to FVPRS eligibles, arguing that catering companies and dry cleaning services should not be eligible under the FVPRS.

[19] AMPTP Petition for Reconsideration at 8-9.

[20] 7 FCC Rcd at 2720.

[21] 7 FCC Rcd at 2721.

V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303 and 307, and Section 1.429(i) of the Commission's Rules, the Petition for Reconsideration filed by Cap Cities/ABC, Inc., is DENIED, and the petition for reconsideration filed by the Alliance of Motion Picture and Television Producers is DENIED but GRANTED to the extent indicated above.

14. IT IS FURTHER ORDERED that all references to "Motion Picture Radio Service" and "Video Production Radio Service" in 47 CFR Part 90 are removed and, in their place, the words "Film and Video Production Radio Service" are substituted. Specifically, references to "Motion Picture Radio Service" in the Part 90 Index and in Sections 90.59, 90.69(b), 90.71(c)(2), 90.73(d)(10), 90.273(b), 90.555(a), 90.617(b), 90.619(a)(3), and 90.619(b)(7)(iii), and references to "Video Production Radio Service" in Section 90.69 are changed to read "Film and Video Production Radio Service," as set forth in the Appendix below.

15. IT IS FURTHER ORDERED that Section 90.69(a)(2) is amended to allow only entities providing technical services directly related to the production, videotaping or filming of on-location film and videotape productions to be eligible to use the FVPRS, as set forth in the Appendix below.

16. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* is effective [30 days after publication in the *Federal Register*].

17. For further information concerning this *Memorandum Opinion and Order*, contact Tatsu Kondo, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-7125.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 90 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 90 -- Private Land Mobile Radio Services

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. In 47 CFR Part 90, change the words "Motion Picture Radio Service" to the words "Film and Video Production Radio Service" in the following places:

Part 90 Index, §§ 90.59, 90.69(b), 90.71(c)(2), 90.73(d)(10), 90.273(b), 90.555(a), 90.617(b), 90.619(a)(3), and 90.619(b)(7)(iii).

3. In 47 CFR Part 90, change the words "Video Production Radio Service" to the words "Film and Video Production Radio Service" in the following places:

Heading of § 90.69, §§ 90.69(a) and 90.69(a)(1).

4. Section 90.69 is amended by revising paragraph (a)(2) to read as follows:

§ 90.69 Film and Video Production Radio Service.

(a) * * *

(2) Persons providing direct technical support to eligibles identified in paragraph (a)(1) of this section.

* * * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-143

In the Matter of

Amendment of the Marine Services Rules (Part 80) and Aviation Services Rules (Part 87) to require registration of 406 MHz radiobeacons — RM-8008

NOTICE OF PROPOSED RULE MAKING

Adopted: May 11, 1993; Released: May 19, 1993

Comment Date: July 9, 1993
Reply Comment Date: July 26, 1993

By the Commission:

I. INTRODUCTION

1. The United States Coast Guard (Coast Guard) filed a petition (RM-8008), Public Notice No. 1894, requesting that the Commission amend Part 80 of the Rules, 47 C.F.R. Part 80, to require registration of emergency position indicating radiobeacons (EPIRBs) operating on the frequency 406.025 MHz with the National Oceanic and Atmospheric Administration (NOAA). Additionally, in the *Report and Order* in PR Docket No. 92-125,[1] the Commission stated that it would address separately the issue of mandatory registration of emergency locator transmitters (ELTs) operating on the frequency 406.025 MHz in the Aviation Services.[2]

II. BACKGROUND

2. EPIRBs and ELTs have been instrumental in over 2500 rescues worldwide. Distress signals transmitted by EPIRBs and ELTs are detected by the COSPAS/SARSAT[3] satellite system. The United States, Canada, France and the Soviet Union operate COSPAS/SARSAT satellites which monitor wide areas of the globe for distress signals on 121.500 MHz, 243.000 MHz, and 406.025 MHz. Signals on 121.500 MHz are continuous signals that are amplitude modulated with an audio swept tone and provide distress alerting and guidance (homing) assistance in emergency situations. The 121.500 MHz signal can only be detected and relayed to search and rescue (SAR) personnel when a COSPAS/SARSAT satellite is in range of both the 121.500 MHz beacon and a rescue coordination center (RCC). There are, therefore, "blind spots" where distress signals can not be relayed to an RCC. The 406.025 MHz distress signals, however, are digital and can be detected and stored on COSPAS/SARSAT satellites and retransmitted to RCCs when satellites are in range. In addition to distress alerting, the 406.025 MHz signal contains information that specifically identifies the beacon and other information to facilitate SAR operations.

3. NOAA maintains a database for 406 MHz EPIRBs that contains more than 13,400 unique identification codes and registration information. Registration by beacon owners in this database is strongly encouraged through education programs by the Coast Guard and NOAA, but is presently voluntary. Manufacturers are required by rule[4] to program into each EPIRB or ELT a unique code and provide an equipment plate or label on each 406 MHz EPIRB or ELT displaying the unique NOAA identification code and registration instructions. Manufacturers must also include a pre-paid, pre-addressed post card soliciting the owner's name and address, telephone number, the type of ship or aircraft and the unique identification code for registration in NOAA's database. When the distress signal is relayed to an RCC the registration information is available to SAR personnel.

4. The planned introduction of geostationary satellites in the mid 1990's that are capable of receiving 406.025 MHz distress signals as an adjunct to the COSPAS/SARSAT system of polar orbiting satellites offers potentially significant improvements in the identification of distress situations to global SAR forces.[5] Geostationary satellites offer the advantage of receiving a 406.025 MHz distress signal almost instantly, but distress signals received by geostationary satellites do not provide position information.[6] Detecting an alert without position or other information, however, is useless.[7]

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[1] 8 FCC Rcd _____, (1993).

[2] Emergency position indicating radiobeacon stations are small battery powered transmitters used to send a distress signal that is used as an alerting signal and to assist search and rescue personnel. In the United States such beacons are named emergency locator transmitters (ELTs) when carried on an aircraft and emergency position indicating radiobeacons (EPIRBs) when carried on ships. ELTs and EPIRBs operate on the same internationally allocated frequencies and transmit identical distress signals.

[3] COSPAS is an acronym for a Russian phrase meaning space system for search and distress vessels. SARSAT stands for search and rescue satellite-aided tracking.

[4] *See* Sections 80.1061(e) and 87.199(e), 47 C.F.R. §§ 80.1061(e) and 87.199(e).

[5] Currently the system has one experimental geostationary satellite located above the Americas at the equator, with Japan, India and Spain planning to place similar geostationary satellites with COSPAS/SARSAT capability into orbit.

[6] Position information is determined by the Doppler shift of a distress signal. Geostationary satellites orbit synchronously with the earth's rotation and are, thus, apparently not moving relative to a beacon's position on the earth's surface. Doppler shift occurs when a polar orbiting satellite passes over a beacon.

[7] Because polar orbiting satellites orbit the earth in approximately 90 minutes and are not evenly spaced, they may not pass over an emergency beacon for up to an hour and a half. A geostationary satellite, however, is capable of detecting beacons anywhere within the satellite's footprint.

III. DISCUSSION

5. When a 406 distress signal is received by the United States Mission Control Center (USMCC), operated by NOAA, the beacon identification number is used to determine if there is any registration information. If the beacon is registered, information such as the owner's name and address, telephone number and the type of ship or aircraft, is relayed to SAR forces in a matter of minutes. The Coast Guard requests that we require registration of EPIRBs used on the frequency 406.025 MHz and states that access to information contained in NOAA's database can be used to assist ships in distress.[8] For example, a rescue operation for a ship carrying 20 passengers requires different resources than a rescue of one person in a small boat. Additionally, the Coast Guard states that requiring registration will allow SAR forces to contact the beacon owner and determine whether the distress is real or false, resulting in more efficient SAR operations, more lives saved in real distress situations, and saving valuable resources when no distress exists.

6. The commenters in PR Docket No. 92-215 strongly agree that beacon registration is essential to realize the full benefit of the 406 MHz satellite system.[9] The Air Force, Coast Guard, NOAA and National Aeronautics and Space Administration (NASA) agree that having access to registration information along with the improved location accuracy of the 406 MHz system can result in a reduction of the time needed to complete a SAR operation. NOAA and NASA estimate that registration will save on average 6 hours per mission.[10] Further, NOAA states that its experience with voluntary registration of 406 EPIRBs shows that when 406 EPIRBs are registered in its database the Coast Guard has been able to avoid unnecessarily using SAR resources by screening false distress signals through telephone calls to registered owners.[11] Typical mission costs of launching a single helicopter to locate and investigate a distress signal are approximately $4,000. The potential savings to the Federal government and SAR forces are substantial with no additional cost or burden to manufacturers and little burden to beacon users. The beacon user would be required to mail to NOAA the pre-paid, pre-addressed post card that the manufacturers currently provide requesting registration information.[12] In view of the strong support in these comments, and because beacon registration can provide valuable distress information to SAR personnel concerning the type and size of the aircraft/vessel as well as prevent launching potentially dangerous missions on false distress signals, we propose to require that 406 MHz ELTs and 406 MHz EPIRBs be registered in NOAA's database.

IV. PROCEDURAL MATTERS

7. This is a non-restricted notice and comment rule making proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

8. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before **July 9, 1993,** and reply comments on or before **July 26, 1993**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Docket's Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

9. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The change proposed herein will have a beneficial effect on the marine and aviation community by enhancing information available to SAR personnel for use in distress situations and will not have a significant economic impact on any entity. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1980).

10. For further information, call James Shaffer, Private Radio Bureau, Special Services Division, (202) 632-7197.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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[8] Without a point of contact from the registration database to determine the aircraft or vessel's description and itinerary, the potential value of dispatching SAR resources up to five hours sooner cannot be realized. The value of the registration information, in general, was dramatically demonstrated recently when one of the world's most experienced long-distance sailors, Mike Plant, failed to register his 406 MHz EPIRB. Even though a distress signal was picked up on October 27, 1992, the beacon's identification number had no name in the registration database to identify the sender of the signal. It took several days to track down the beacon's identification number from the store where Plant had purchased it. *See* N.Y. Times, Nov. 14, 1992, at 1.

[9] Comments to PR 92-215, NASA at 3, NOAA at 3, Air Force at 2, Coast Guard at 2, Coppin of MPR Teltech, Ltd. at 3.

[10] Comments to PR 92-215 by NASA at 5, NOAA at 7.

[11] NOAA notes that when 406 EPIRBs are registered the Coast Guard is able to resolve approximately 80 per cent of false distress signals prior to launching a SAR mission. By contrast, when the 406 EPIRB is not registered the Coast Guard is only able to resolve approximately 20 per cent of all false distress signals prior to launching a SAR mission. Comments to PR 92-215, NOAA at 3.

[12] Compliance programs would consist primarily of educational activities. Monetary forfeitures could be imposed, however, particularly in cases where failure to register a 406 MHz EPIRB results in the unnecessary use of SAR forces.

PROPOSED RULE

Parts 80 and 87 of Chapter 1 of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

Part 80 - STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.1061 paragraph (e) is amended by revising the last two sentences of paragraph (e) and revising paragraph (f) to read as follows:

§ 80.1061 Special requirements for 406.025 MHz EPIRBs.

* * * * *

(e) * * * With each marketable EPIRB unit the manufacturer or grantee must include a postage pre-paid registration card printed with the EPIRB identification code addressed to: NOAA/NESDIS, SARSAT Operations Division, E/SP3, Federal Building 4, Washington, DC 20233. The registration card must request the owner's name, address, telephone number, type of ship and include the following statement: "WARNING-failure to register this EPIRB with NOAA could result in a monetary forfeiture being issued to the owner."

(f) To enhance protection of life and property it is mandatory that each 406.025 MHz EPIRB be registered with NOAA and that information be kept up-to-date. Therefore, in addition to the identification plate or label requirements contained in §§ 2.925, 2.926 and 2.1003 of this chapter, each 406.025 MHz EPIRB must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: "The owner of this 406.025 MHz EPIRB must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: NOAA, NOAA/SARSAT Operations Division, E/SP3, Federal Building 4, Washington, D.C. 20233." Vessel owners shall advise NOAA in writing upon change of vessel or EPIRB ownership, transfer of EPIRB to another vessel, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

* * * * *

Part 87 - AVIATION SERVICES

3. The authority citation for Part 87 continues to read as follows:

AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

4. In Section 87.199 paragraphs (e) and (f) are revised to read as follows:

§ 87.199 Special requirements for 406.025 MHz ELTs.

* * * * *

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.025 MHz COSPAS/SARSAT satellite system, must be programmed in each ELT unit to establish a unique identification for each ELT station. With each marketable ELT unit the manufacturer or grantee must include a postage pre-paid registration card printed with the ELT identification code addressed to: NOAA/NESDIS, SARSAT Operations Division, E/SP3, Federal Building 4, Washington, DC 20233. The registration card must request the owner's name, address, telephone number, type of aircraft and include the following statement: "WARNING-failure to register this ELT with NOAA could result in a monetary forfeiture being issued to the owner."

(f) To enhance protection of life and property it is mandatory that each 406.025 MHz ELT be registered with NOAA and that information be kept up-to-date. In addition to the identification plate or label requirements contained in §§ 2.925, 2.926 and 2.1003 of the Commission Rules, each 406.025 MHz ELT must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: "The owner of this 406.025 MHz ELT must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: NOAA, NOAA/SARSAT Operations Division, E/SP3, Federal Building 4, Washington, D.C. 20233." Aircraft owners shall advise NOAA in writing upon change of aircraft or ELT ownership, transfer of ELT to another aircraft, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

* * * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of the Amateur Service Rules to Establish Station Call Sign Administrators for Club and Military Recreation Stations.

ORDER

Adopted: May 11, 1993; **Released: May 19, 1993**

By the Commission:

1. This *Order* amends the amateur service rules to implement the recent statutory enactment of the Congress that authorizes the Commission to use volunteer organizations for the purpose of providing amateur service club and military recreation station call signs. The amended rules provide for the establishment of call sign administrators that enter into written agreements with the Commission to furnish the services contemplated by the statute.

2. The Telecommunications Authorization Act of 1992, Pub. L. No. 102-538, § 208, 106 Stat. 3533 (1992), authorizes the Commission, for purposes of providing club and military recreation station call signs, to use the voluntary, uncompensated, and unreimbursed services of amateur radio organizations that have tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986. The American Radio Relay League, Inc. (ARRL) and the National Amateur Radio Association (NARA) both have expressed interest in being selected by the Commission as station call sign administrators.[1]

3. The rules that we adopt herein implement the plain intent of the statute. They will make club call signs widely available, yet keep the program from becoming administratively burdensome and unwieldy for the Commission's staff. We will require that any organization selected by the Commission as a club and military recreation station call sign administrator have a membership, at the time it applies, that includes at least one percent of the total number of amateur operators licensed by the Commission.[2] With this requirement, we will assure that the organizations are sufficiently large to be capable of providing the voluntary services. Further, we may limit the total number of administrators certified at any time.

4. We also will require that each call sign administrator enter into a written agreement with the Commission. Among other things, the administrator must agree not to charge an application fee or accept reimbursement of any kind for services rendered. In addition, administrators must agree to accept applications for club and military recreation stations on a non-discriminatory basis. Each administrator will process applications from the trustees of club stations or custodians of military recreation stations and prepare the license document showing the call sign, which will be forwarded to the Commission's Licensing Division for issuance.[3]

5. The rules adopted herein delegate authority to the Chief, Private Radio Bureau, to execute agreements with qualified organizations that desire to provide services to the Commission as club and military recreation station call sign administrators. Eligibility criteria for such administrators are set forth in these rules. We will announce by Public Notice when an organization interested in becoming a club and military recreation station call sign administrator may apply.

6. We also will announce by Public Notice, and update as necessary, the names and addresses of organizations that have been certified as club and military recreation station call sign administrators once the selections have been made. At that time, any applications for new club or military recreation station licenses must be made on FCC Form 610-B and submitted to a club and military recreation station call sign administrator. Likewise, applications for renewed or modified club or military recreation stations must be made on FCC Form 610-B. Applications for renewed or modified club or military recreation station licenses, however, must be submitted to the club and military recreation station call sign administrator that provided the call sign initially.

7. Section 4(g)(3)(D) of the Communications Act of 1934, as amended, requires the Commission to enact regulations that "preclude the acceptance of any gift, bequest or donation that would create a conflict of interest or the appearance of a conflict of interest." In separate proceedings, we shall promulgate conflict of interest regulations to govern our general authority, pursuant to section 4(g)(3)(A), to accept unconditional gifts, donations and bequests. As to section 4(g)(3)(B), however, we do not believe that the provision of these specific services by the groups we anticipate will be selected as club call sign administrators creates a conflict of interest or the appearance of a conflict of interest. The Commission does not now issue new club call signs and has no plans to do so. The services provided by club call sign administrators, therefore, will benefit only the amateur community and will not be provided to assist the Commission in carrying out its responsibilities. We do not believe, therefore, that the provision of these services by club call sign administrators creates a conflict of interest or places the Commission in the position of appearing to have a conflict of interest vis-a-vis such administrators. Because utilization

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[1] ARRL and NARA letters to Chief, Private Radio Bureau, of October 23, 1992, and November 9, 1992, respectively.

[2] As of December 29, 1992, there were 587,657 amateur operators licensed by the Commission.

[3] Each administrator will be assigned initially a block of approximately 176,000 never-before issued call signs having a two-letter prefix from the NA-NZ series, a digit, and a three-letter suffix. The call sign administrator's policies and procedures for the call sign assignment system must be consistent with the international Radio Regulations. *See* Numbers 2096-2101, inclusive (Geneva, 1979; as amended, 1987).

of these services does not in any way reflect unfavorably on the Commission's ability to carry out its regulatory duties in a fair and objective manner, we therefore conclude that conflict of interest restrictions are unnecessary with regard to the particular services at issue.

8. Because the amended rules will benefit a segment of the amateur community by providing for call signs for club and military recreation stations and will provide that several organizations can be administrators of such a call sign system, the amended rules are minor and non-controversial and a subject in which the public is not likely to be interested. We find, therefore, for good cause, that compliance with the notice and comment procedure of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. § 553(b)(B).

9. We certify that the Regulatory Flexibility Act of 1980 does not apply to the amended rules because there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The amateur service club and military recreation stations that receive licenses as a result of this proceeding would not be authorized to transmit any communications that facilitate the business or commercial affairs of any party. *See* 47 C.F.R. § 97.113(a). The Secretary shall send a copy of this *Order*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1980).

10. Accordingly, IT IS ORDERED that effective **July 19, 1993,** Parts 0, 1, and 97 of the Commission's Rules, 47 C.F.R. Parts 0, 1, and 97, ARE AMENDED as set forth below. Authority for this action is found in Sections 4(g) and (i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(g) and (i) and 303(r).

11. For information concerning this *Order* contact Maurice J. DePont, Private Radio Bureau, (202) 632-4964.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Parts 0, 1, and 97 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

Part 0 - Commission Organization

1. The authority citation for Part 0 continues to read as follows:

Authority citation: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.131 is amended by adding new paragraph (k) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(k) Certifies organizations as amateur service club and military recreation station call sign administrators; considers requests for review of decisions of the administrators; oversees actions and practices of the administrators; and decertifies organizations that do not perform satisfactorily.

3. Section 0.331 is amended by adding new paragraph (d) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(d) The Chief Private Radio Bureau, or designee, is delegated authority to execute, in the name of the Commission, agreements pertaining to certification and employment of services of organizations found qualified to be amateur service club and military recreation station call sign administrators.

4. Section 0.486 is added to Part 0 to read as follows:

§ 0.486 Application for amateur service club or military recreation station license.

Each application for a new amateur service club or military recreation station license must be submitted to a club and military recreation station call sign administrator. Each application for a modified or renewed amateur service club or military recreation station license must be submitted to the club and military recreation station call sign administrator that provided it.

Part 1 - Practice and Procedure

1. The authority citation for Part 1 continues to read as follows:

Authority citation: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.912(a) is revised to read as follows:

§ 1.912 Where applications are to be filed.

(a) Each application for a new amateur service operator/primary station license and each application involving a change in operator class, except as noted below, must be submitted to the volunteer examiners (VEs) administering the qualifying examination. *See* § 97.17(c) of this chapter. The VEs are required to submit the applications of persons passing their respective examinations to the Commission for Novice Class operator licenses, or to the Volunteer-Examiner Coordinator (VEC) for all other amateur operator licenses, except as noted below. Each application for a new amateur service club or military recreation station license must be submitted to a club and military recreation station call sign administrator. Each application for a modified or renewed amateur service club or military recreation station license must be submitted to the club and military recreation station call sign administrator that provided it. New, modified, and renewed amateur service club or military recreation station license applications must be submitted by the administrator to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325-7245.

All other applications for amateur service licenses must be submitted to FCC, 1270 Fairfield Road, Gettysburg, PA 17325-7245.

* * * * *

Part 97 - Amateur Radio Service

1. The authority citation for Part 97 continues to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

2. Section 97.17 is amended by revising paragraphs (b) and (f) and by adding a new paragraph (g) to read as follows:

§ 97.17 Application for new license.

* * * * *

(b) Each application for a new operator/primary station license must be made on FCC Form 610. Each application for a reciprocal permit for alien amateur licensee must be made on FCC Form 610-A. Each application for a new amateur service club or military recreation station license must be made on FCC Form 610-B. No new license for a RACES station will be issued.

* * * * *

(f) A call sign will be assigned systematically to each primary station. The FCC will issue public announcements detailing the policies and procedures of the primary station call sign assignment system. The FCC will not grant any request for a specific call sign.

(g) Each application for a new amateur service club or military recreation station license must be submitted to a club and military recreation station call sign administrator.

3. Paragraphs (a) and (b) of Section 97.19 are revised to read as follows:

§ 97.19 Application for a renewed or modified license.

(a) Each application for a renewed or modified operator/primary station license must be made on FCC Form 610. Each application for a renewed or modified RACES station license must be made on FCC Form 610-B. A reciprocal permit for alien amateur licensee is not renewable. A new reciprocal permit may be issued upon proper application.

(b) Each application for a renewed or modified amateur service license must be accompanied by a photocopy of the license document or the original document, unless it has been lost, mutilated or destroyed. Each application for a modified operator license involving a change in operator class must be submitted to the VEs administering the qualifying examination. Each application for a modified or renewed amateur service club or military recreation station license must be made on FCC Form 610-B and submitted to the club and military recreation station call sign administrator that provided it. All other applications must be submitted to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325-7245.

* * * * *

4. Section 97.29 is added to read as follows:

§ 97.29 Club and military recreation station call sign administration.

No organization may serve as an amateur service club and military recreation station call sign administrator unless it has entered into a written agreement with the FCC. The FCC will issue public announcements listing the club and military recreation station call sign administrators. Each club and military recreation station call sign administrator must abide by the terms of the agreement. Each club and military recreation station call sign administrator must:

(a) Be an organization that has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986 and that exists for the purpose of furthering the amateur service;

(b) Be an organization whose membership includes at least one percent of the amateur operators licensed by the FCC;

(c) Be capable of serving as a club and military recreation station call sign administrator in all places where the amateur service is regulated by the FCC;

(d) Accept and process all properly-completed license application Forms 610-B received from qualified club and military recreation station license trustees or custodians and submit them to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325-7245;

(e) Not charge the applicants any fee or accept any form of reimbursement for services provided as an amateur service club and military recreation station call sign administrator;

(f) Accept and process applications from applicants for club or military recreation station licenses, under §§ 97.5(d)(2) and (3) of this Part, without regard to race, sex, religion, national origin or membership (or lack thereof) in any amateur service organization;

(g) Provide the FCC with a license document, including the unique station call sign, ready for endorsement and mailing within 10 days of receipt of a properly-completed application for a club or military recreation station license;

(h) Provide the FCC each month, in a format specified by the FCC, a data file of license documents processed during that month;

(i) Issue public announcements detailing the policies and procedures of the club and military recreation station call sign assignment system;

(j) Accept and respond to inquiries concerning club and military recreation station applications and license matters;

(k) Provide the FCC with a plan for processing applications for modified or renewed amateur service club or military recreation station licenses in the event that the organization ceases to function as a club and military recreation station call sign administrator.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
May 12, 1993

Released: May 20, 1993

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Dallas Media Investors Corporation, Debtor-in-Possession
Licensee, KDFI-TV, Dallas, TX
433 Regal Row
Dallas, TX 75247

1800C1-MD
92090176

Dear Licensee:

This letter constitutes a Notice of Apparent Liability for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended. It is issued under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's rules.

On November 19, 1992, we asked for your comments concerning possible violations of the Communications Act and the Commission's rules by Television Station KDFI-TV, Dallas, TX, in connection with your August 17, 1992, broadcast of "Prime Time Lies." Your response of January 8, 1993, addressed our sponsorship and rebroadcast questions.

A. Sponsorship identification

Section 317 of the Communications Act and Section 73.1212 of the Commission's rules require that any material broadcast in exchange for money, service, or other valuable consideration to the station, directly or indirectly, be accompanied by a sponsorship identification announcement or disclosure. This announcement must clearly advise the audience that the time was purchased, and by whom.

You admit that the program time for your broadcast of "Prime Time Lies" was purchased by Robert Tilton Ministries. You state that you broadcast the same program twice a day on August 14, 17, 18, 24, and September 10 and 18, 1992, for a total of 12 times.

You assert that the introductory on-screen message "Success N Life Special Presentation," and other similar phrases throughout the program, were sufficient to indicate to the general viewing audience that the program time was purchased and by whom. We disagree. Under the circumstances, KDFI-TV was obliged to advise its audience that Robert Tilton Ministries purchased the air time to present "Prime Time Lies." The words "presentation," "copyright," and other words used in the program to indicate the source of the material or the ownership rights of the program's creator, do not convey the message required by the sponsorship identification rules and statute. *See Sponsorship Identification Announcements*, 66 FCC 2d 302 [41 RR 2d 761] (1977); *see also Public Notice*, 6 FCC Rcd 5861 (1991); *Channel 36 Licensee Corporation*, 7 FCC Rcd 6541 (MMB 1992).

Accordingly, it appears that you have violated Section 317 of the Communications Act and Section 73.1212 of the Commission's rules by broadcasting "Prime Time Lies" without appropriate sponsorship identification on August 14, 17, 18, and 24, 1992, and on September 10 and 18, 1992.

B. Rebroadcasting without permission

Section 325(a) of the Communications Act and Section 73.1207 of the Commission's rules prohibit the rebroadcast of another broadcaster's program, or any part thereof, without the express authority of the originating station.

Your broadcasts of "Prime Time Lies" appeared to rebroadcast portions of several network programs and broadcasts of local television and radio stations. You admit that you did not seek rebroadcast permission from any of the apparent sources, explaining that you understood such consent to be necessary under Commission policy only when there is evidence that the material at issue was taped off the air from the originating station. You state that KDFI did not record the material from any other broadcast, and, further, that since it received the program by satellite feed it could not know in advance that rebroadcast permission might be required. You state that under the circumstances you relied on Tilton Ministries to obtain any necessary third party consents.

Section 325(a) and Section 73.1207 would require rebroadcast permission, whether you received the program by satellite feed, cable transmission,[1] or microwave common carrier.[2] The *Senator Ralph W. Yarborough*[3] case that you cite in your defense found no violation of the rebroadcast rule because the portions of political speeches that were broadcast were taped live, not off the air as originally alleged. In light of all the circumstances, however, no further action with respect to this issue appears warranted. You are cautioned that we will hold the licensee responsible for failure to obtain rebroadcast consent if a similar situation occurs in the future, especially if we receive a complaint from the broadcaster whose material was used.

Sanctions

With respect to your apparent repeated violations of the sponsorship identification requirements, as fully detailed above, you are hereby advised of your apparent liability for a total forfeiture of Twelve Thousand Five Hundred Dollars ($12,500). The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Act and the guidelines described in our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *on recon.*, 7 FCC Rcd 5339 (1992), *pet. for*

[1] *Springfield Television Broadcasting Corp.*, 2 FCC 2d 38 (1965).
[2] *Heart of Black Hills*, 28 FCC 2d 38, *aff'd*, 29 FCC 2d 332, *recon. denied*, 30 FCC 2d 781 (1971).
[3] 3 RR 2d 775 (1964).

review pending sub nom. USTA v. FCC, No. 92-1321 (D.C. Cir. filed July 30, 1992). Under these standards, $6,250 is the base forfeiture for violation of sponsorship identification requirements. Because the violations were repeated, we find that a forfeiture in the amount of $12,500 is appropriate.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's rules are summarized in the attachment to this letter.

Sincerely,

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

ET Docket No. 92-298

In the Matter of

Amendment of the Commission's
Rules to Establish a Single AM
Radio Stereophonic Transmitting
Equipment Standard

ORDER DENYING REQUEST FOR EXTENSION OF TIME TO FILE REPLY COMMENTS

Adopted: May 13, 1993; Released: May 20, 1993

By the Chief Engineer:

1. On April 20, 1993, Leonard R. Kahn filed a request to extend the deadline for filing reply comments in this proceeding by two weeks "to allow engineers throughout the country adequate time to file reply comments."

2. The Commission does not routinely grant extensions of time for filing comments or reply comments.[4] Furthermore, the Commission's rules require that motions to extend the comment or reply comment periods be filed at least seven days before the applicable filing date. The filing date for reply comments in this proceeding was April 20, 1993. Mr. Kahn's extension request was filed on April 20, 1993, the date on which reply comments were due. It was, therefore, one week late.

3. In addition, the Commission is under a statutory mandate to adopt an AM stereophonic transmitting equipment standard by October 26, 1993.[5] The comment period was chosen in order to provide sufficient time for the Commission to analyze the comments and reply comments. We believe that the comment period was adequate to permit the commenters to address all relevant issues. Accordingly, IT IS ORDERED that the request for an extension of the reply comment period in this proceeding filed by Leonard R. Kahn IS DENIED.

4. This action is taken pursuant to authority found in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i) and 303, and pursuant to Sections 0.31, 0.241, and 1.46 of the Commission's Rules, 47 C.F.R. Sections 0.31, 0.241, and 1.46. For further information, contact David Means, Engineering Evaluation Branch, Office of Engineering and Technology, (301) 725-1585 ext. 206.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Stanley
Chief Engineer

[4] 47 C.F.R. 1.46 (1992).
[5] *See*, Telecommunications Authorization Act of 1992, P.L. 102-538, 106 Stat. 3533, Sec. 214.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Sagittarius Broadcasting
Corporation,
Infinity Broadcasting Corporation
of Pennsylvania &
Infinity Broadcasting Corporation
of Washington, D.C.

Licensees of Radio Stations
WXRK(FM), New York, New York
WYSP(FM), Philadelphia, Pennsylvania
& WJFK(FM), Manassas, Virginia

Petition for Reconsideration
of Forfeiture Order

MEMORANDUM OPINION AND ORDER

Adopted: May 11, 1993; Released: May 20, 1993

By the Commission:

1. The Commission has under consideration (1) a Forfeiture Order issued October 23, 1992[1] to Sagittarius Broadcasting Corporation, Infinity Broadcasting Corporation of Pennsylvania and Infinity Broadcasting Corporation of Washington, D.C., licensees of Radio Stations WXRK(FM), New York, New York, WYSP(FM), Philadelphia, Pennsylvania, and WJFK(FM), Manassas, Virginia, respectively; (2) a Petition for Reconsideration and Request for Stay filed by the licensees on November 23, 1992. In the interests of expediting a final disposition of this matter, this petition requesting reconsideration of final actions taken pursuant to delegated authority by the Chief, Mass Media Bureau, has been referred to the Commission pursuant to 47 C.F.R. Section 1.106(a)(1).

2. The Forfeiture Order was assessed for willful or repeated violation of 18 U.S.C. Section 1464, prohibiting the broadcast of indecent programming. The facts are set forth in full detail in the Notice of Apparent Liability[2] and will not be repeated here.

3. The licensees essentially reiterate, without providing additional facts, the same arguments that were carefully examined and disposed of in the Bureau's underlying decisions in this proceeding. We have reviewed those decisions and the licensees' contentions. We find the Bureau's analysis and disposition of the issues raised proper and discern no basis in the subject petition to reverse or alter the Bureau's determination.

4. The licensees request a stay of this proceeding pending Commission action on their request for declaratory ruling[3] that WXRK's broadcasts of the Howard Stern Show are not actionable for indecency because of their "demonstrable lack of a child audience." The Bureau specifically addressed and properly rejected the licensees' contention that their audience poll adequately rebutted the presumption that children may be exposed to indecent material if that material is aired outside "safe harbor" hours.[4] We find no basis in this argument, therefore, to stay this proceeding.

5. The licensees also argue that this proceeding should be stayed pending Commission action on a request for stay filed in GC Docket No. 92-223. The Commission subsequently completed this rulemaking proceeding and denied the request for stay when it adopted regulations to establish a new "safe harbor" for indecent broadcasts, pursuant to the requirements of Section 16(a) of the Public Telecommunications Act of 1992. *See Enforcement of Prohibitions Against Broadcast Indecency, Report and Order*, 8 FCC Rcd 704 (1993), *petitions for review pending sub nom., Action for Children's Television, et al., v. FCC*, Nos. 93-1092, 93-1100 (D.C. Cir. filed Jan. 27, 1993). Accordingly, the licensees' request for stay on this ground is now moot.[5]

6. ACCORDINGLY, IT IS ORDERED, That the Petition for Reconsideration and the Request for Stay filed by the licensees on November 23, 1992, ARE DENIED.

7. IT IS FURTHERED ORDERED, That Sagittarius Broadcasting Corporation, licensee of Station WXRK(FM), New York, New York, Infinity Broadcasting Corporation of Pennsylvania, licensee of Radio Station WYSP(FM), Philadelphia, Pennsylvania, and Infinity Broadcasting Corporation of Washington, D.C., licensee of Radio Station WJFK(FM), Manassas, Virginia, FORFEIT to the UNITED STATES OF AMERICA the sum of two thousand dollars ($2,000) each for their violations of Section 1464 of Title 18 of the United States Code.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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[1] *Sagittarius Broadcasting Corporation*, 7 FCC Rcd 6873 (MMB 1992).

[2] *Sagittarius Broadcasting Corporation*, 5 FCC Rcd 7291 (MMB 1990).

[3] *See* Petition for Declaratory Ruling filed March 30, 1992.

[4] Currently, and at the time relevant in this proceeding, the "safe harbor" hours are 8:00 p.m. to 6:00 a.m. The material here was aired between 6:00 a.m. and approximately 10:00 a.m.

[5] Although the new "safe harbor" rules have been stayed by the U.S. Court of Appeals for the D.C. Circuit, *Action for Children's Television v. FCC, supra* (D.C. Cir. Feb. 23, 1993), the Court has clarified, by further order dated March 8, 1993, that this stay affects only our enforcement of the indecency prohibition during the hours of 8:00 p.m. to midnight. It specifically noted that its February 23 order had denied petitioners' requests for additional restrictions, including suspending enforcement action against programs with no appreciable child audience.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

CENTRAL CATHOLIC HIGH SCHOOL FOUNDATION
Hastings, NE — File No. BPLIF-920424EK

CAMPBELL SCHOOL DISTRICT R-13
Gibbon, NE — File No. BPLIF-911101DF

KEARNEY STATE COLLEGE FOUNDATION
Kearney, NE — File No. BPLIF-920424EJ

For Construction Permit and License in the Instructional Television Fixed Service on Channels A1, A2, A3, and A4

MEMORANDUM OPINION AND ORDER

Adopted: May 12, 1993; Released: May 20, 1993

By the Commission:

1. The Commission has before it for consideration the mutually exclusive applications of Central Catholic High School Foundation ("Central"), Campbell School District R-13 ("Campbell"), and Kearney State College Foundation ("Kearney"), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on channels A1-A4 in the area of Hastings, Gibbon, and Kearney, Nebraska, respectively.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of Central, Campbell, and Kearney. All three applicants are qualified to be ITFS licensees. Campbell is a governmental organization engaged in the formal education of enrolled students and is accredited by the Nebraska Department of Education, while Central and Kearney are nonprofit organizations whose purposes are educational and include providing formal education to schools engaged in the formal education of enrolled students. Central's sole member, Central Catholic High School, is accredited by the Nebraska Department of Education, and Kearney's sole member, the University of Nebraska, Kearney, is accredited by the North Central Association of Colleges. Although Central and Campbell propose to serve students outside of their districts, because they also propose to provide formal educational programming to schools within their own jurisdictions, they qualify as local applicants.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive ITFS applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been established. *Instructional Television Fixed Service - Second Report and Order in MM Docket 83-523* (*Second Report and Order*), 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. §74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, Central, Campbell, and Kearney are awarded points based on the following criteria:

Localism. Each applicant is entitled to four points either for being a governmental entity serving the formal educational needs of schools within its jurisdiction or for being a nonprofit organization whose purposes are educational and include providing formal education to schools in its area which are engaged in the formal education of enrolled students.

Accreditation. Campbell is accredited by the Nebraska State Department of Education Agency, Central's member is accredited by the Nebraska State Department of Education,

[1] A "local" applicant is an institution or organization that is physically located in the community, or metropolitan area, where service is proposed. *Second Report and Order*, 101 FCC 2d at 59; 47 C.F.R. §74.932, Note 1.

[2] One point is awarded for a proposed schedule of at least 21 average hours per channel per week of formal educational programming or of at least 41 average hours per channel per week of other ITFS programming. Two points are awarded for a proposed schedule of at least 41 average hours per channel per week of formal educational programming or at least 61 hours per channel per week of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. §74.913(b)(4).

and Kearney's member is accredited by the North Central Association of Colleges. Consequently, all three are entitled to three points for accreditation.

Four-Channel Limitation. None of the applicants is the licensee of, or has filed applications for, additional ITFS channels in the Hastings, Gibbon, or Kearney areas. Therefore, each is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid." Where amounts and types of programming proposed in the schedule and in the grid are inconsistent, we shall consider as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits that level of programming to be transmitted. *Hispanic Information and Telecommunications Network, Inc.* 7 FCC Rcd 5924 (1992). Central's illustrative schedule proposes an average of 20 hours of ITFS programming per channel per week. Because the schedule does not indicate which ITFS programs are formal, or those to be delivered to enrolled students for credit, as requested in Question 5, Section IV of the application, we will consider the programming on Central's schedule as nonformal for the purposes of determining merit points. *Valley View Independent School District,* 7 FCC Rcd 7228 (1992). In contrast, its programming grid proposes an average of 20 hours of formal educational programming per channel per week. Because neither the schedule nor the grid establishes the threshold amount at which merit points are awarded, Central is entitled to no programming merit points.

The illustrative schedule for Campbell proposes an average of 24.375 hours of ITFS programming per channel per week. As with Central, Campbell's schedule does not indicate which programs are formal educational. Accordingly, for comparative purposes, all of Campbell's programming will be treated as nonformal. In contrast, its programming grid proposes an average of 4 hours of formal educational programming per channel per week.[3] Because neither the schedule nor the grid reach the threshold amount at which merit points are awarded, Campbell is entitled to no programming merit points.

Kearney's illustrative schedule proposes an average of 20 hours of ITFS programming, but once again, the schedule does not indicate which programs are formal educational. Accordingly, we will consider the programming on Kearney's schedule as nonformal. *Valley View Independent School District, supra.* Its programming grid proposes an average of 20 hours of formal educational programming per channel per week. Because neither the schedule nor the grid reaches the threshold at which merit points are awarded, Kearney is entitled to no programming merit points.

E- and F- Channel Group Relocations. None of the applicants is the current licensee of an E or F channel seeking to relocate to other channels; therefore, none is entitled to the one point for such applicants.

Total. Central, Campbell, and Kearney are each entitled to a total of nine points: four points for being local; three points for being accredited; and two points for observing the four-channel limitation. Because the applicants are tied, we must utilize our tie-breaker mechanism to determine the winning applicant.

TIE-BREAKER MECHANISM

5. When the comparative procedure results in a tie among two or more applicants, the parties are given 30 days from notification to negotiate an agreement regarding division of the use of channels. If no agreement is reached and advanced to the Commission within that time, the tentative selectee is determined through the tie-breaker mechanism detailed in *Instructional Television Fixed Service-Third Report and Order in MM Docket No. 83-523,* (*"Third Report and Order"*), 4 FCC Rcd 4830 (1989), *Third Report and Order Reconsidered,* 5 FCC Rcd 945 (1990), (*"Third Report Recon."*) and Section 74.913(d) of the Commission's Rules. This mechanism is based upon the submission by each applicant of the number of students at its proposed receive sites who are formally enrolled in classes for credit toward an academic degree or diploma or a legally required certification or license.[4] Each applicant then has 15 days to respond to any aspect of the enrollment submissions. Once this response period has expired, the Commission compares the figures to determine if any applicant's system reaches fewer than 80 percent as many students as another applicant's. If so, the application resulting in service to the fewer number of students is denied, and the remaining application is granted. If more than one applicant remains, the channels or channel capacity are evenly divided among the remaining applicants. Because the three applicants here did not reach an agreement regarding the use of the channels, we look to the enrollment figures submitted by each.

6. Kearney has supplied documentation attesting to an enrollment of 7520 students. Central has provided documentation showing that a total of 4410 students will be served at its receive sites. Finally, Campbell has submitted a letter indicating that 1275 students will be served at its receive sites, but the necessary receive site letters from schools beyond its jurisdiction were supplied on January 13, 1993, which is after the April 24, 1992 cut-off date. Consequently, Campbell can be credited only with 110 students, or the number enrolled in the schools within its jurisdiction. Accordingly, we credit Kearney with 7520 students, Central with 4410 students, and Campbell with 110 students. Because the numbers of students

[3] Campbell filed an amendment on December 28, 1992 which brings into accord the number of hours of programming entered into the grid and the number of hours of programming listed in the schedule. However, since the amendment was filed after the "B" cut-off date, no comparative enhancement may be awarded based upon the amendment.

[4] Only receive sites specified as of the "B" cut-off date may be used in determining the number of students served. *Third Report Recon., supra.* Moreover, applicants serving students other than their own must have submitted letters, also by the "B" cut-off date, from those receive sites indicating an intention to use the proposed service. 47 C.F.R. §74.911(c); *Third Report and Order,* 4 FCC Rcd at 4832. Specifically, those letters, to be signed by the administrator or authority responsible for curriculum planning, must indicate that the applicant's programming offerings have been viewed and that such programming will be incorporated in the sites' curricula. Further, the letters should discuss the types and amounts of programming expected to be used and an indication of the extent to which representatives from the various sites will participate in the planning, scheduling, and production of the programming. 47 C.F.R. §74.932, Note 2.

credited to Campbell, 110, and to Central, 4410, are less tnan 80 percent of the number of students credited to Kearney, 7520. Kearney will be authorized to operate facilities on channels A1-A4. Furthermore, because the application of Central is not mutually exclusive with that of Kearney, it will be granted as well, and the application of Campbell will be denied.

OTHER MATTERS

7. Kearney and Central both propose to lease excess capacity for non-ITFS use, as permitted by Section 74.931. Kearney has submitted a copy of its lease with Russell G. Hilliard II, which accords in all respects with our requirements. Likewise, Central has submitted a copy of its lease with Wireless Entertainment Network which accords in all respects with our requirements. Finally, there are no petitions to deny either application, and we find these applicants to be fully qualified.

8. Accordingly, IT IS ORDERED, That the applications of Kearney State College Foundation (BPLIF-920424EJ) and of Central Catholic High School Foundation (BPLIF-920424EK) ARE GRANTED for channels A1-A4, and the application of Campbell School District R-13 (BPLIF-911101DF) IS DENIED.

9. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

ADAMS CENTRAL JUNIOR-SENIOR HIGH SCHOOL
Gibbon, NE — File No. BPLIF-911101DA

HASTINGS CATHOLIC SCHOOLS
Hastings, NE — File No. BPLIF-920424EI

For Construction Permit and License in the Instructional Television Fixed Service on Channels B1, B2, B3, and B4

MEMORANDUM OPINION AND ORDER

Adopted: May 12, 1993; Released: May 20, 1993

By the Commission:

1. The Commission has before it for consideration the mutually exclusive applications of Adams Central Junior-Senior High School ("Adams") and Hastings Catholic Schools ("Hastings"), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on channels B1-B4 in the areas of Gibbon and Hastings, Nebraska, respectively.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of Adams and Hastings. Adams is qualified to be an ITFS licensee. It is a school engaged in the formal education of enrolled students, and it is accredited by the Nebraska Department of Education. Although Adams proposes to serve students outside its district, because it also proposes to serve schools within its own district, it qualifies as a local applicant. Hastings, an organization engaged in the formal education of enrolled students and accredited by the Nebraska Department of Education, is also a qualified ITFS applicant. Hastings proposes to serve its own students and is therefore a local applicant, even though it also intends to serve schools beyond its jurisdiction.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive ITFS applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been established. *Instructional Television Fixed Service - Second Report and Order in MM Docket 83-523 (Second Report and Order)*, 101 FCC2d 49, 65-72 (1985); 47 C.F.R. §74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, Adams and Hastings are awarded points based on the following criteria:

Localism. Each applicant is entitled to four points for being a school engaged in the formal education of enrolled students.

Accreditation. Each applicant, accredited by the Nebraska Department of Education, is entitled to three points for accreditation.

Four-Channel Limitation. Neither Adams nor Hastings is the licensee of, or has filed applications for, additional ITFS channels in the Gibbon or Hastings, Nebraska areas. Consequently, each is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid." Where the amounts and types of programming proposed in the schedule and in the grid are inconsistent, we shall consider as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits that level of programming to be transmitted. *Hispanic Information and Telecommunications Network, Inc.*, 7 FCC Rcd 5924 (1992). Adams' illustrative schedule proposes an average of 24.375 hours of ITFS programming per channel per week. However, the schedule does not indicate which programs are formal educational or those to be delivered to enrolled students for credit, as required by Section IV, Question 5 of the application. Accordingly, we will treat this programming as nonformal for the purposes of

[1] A "local" applicant is an institution or organization that is physically located in the community, or metropolitan area, where service is proposed. *Second Report and Order*, 101 FCC2d at 59; 47 C.F.R. §74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of total ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. §74.913(b)(4).

determining merit points. *Valley View Independent School District*, 7 FCC Rcd 7228 (1992). Further, its programming grid proposes an average of 4 hours of formal educational programming per channel per week.[3] Because neither amount reaches the threshold at which merit points are awarded, Adams is entitled to no programming merit points.

Hastings' illustrative schedule indicates an average of 20 hours of ITFS programming per channel per week, but the schedule does not indicate which are formal educational. We will therefore treat this programming as nonformal. Further, its programming grid indicates 20 hours per channel per week of formal educational programming. Again, neither amount reaches the threshold at which merit points are awarded, and Hastings is therefore entitled to no programming merit points.

E- and F- Channel Group Relocation. Neither Adams nor Hastings is the current licensee of an E or F channel seeking to relocate to other channels. Consequently, neither is entitled to the one point for such applicants.

Total. Adams and Hastings are each entitled to points for being local, for being accredited, for observing the four-channel limitation, for a total of nine points each. Because the applicants are tied, we must utilize our tie-breaker mechanism to determine the winning applicant.

TIE-BREAKER MECHANISM

5. When the comparative procedure results in a tie among two or more applicants, the parties are given 30 days from notification to negotiate an agreement regarding division of the use of channels. If no agreement is reached and advanced to the Commission within that time, the tentative selectee is determined through the tie-breaker mechanism detailed in *Instructional Television Fixed Service-Third Report and Order in MM Docket No. 83-523, (Third Report and Order)*, 4 FCC Rcd 4830 (1989), *Third Report and Order Reconsidered*, 5 FCC Rcd 945 (1990), and Section 74.913(d) of the Commission's Rules. This mechanism is based upon the submission by each applicant of the number of students at its proposed receive sites who are formally enrolled in classes for credit toward an academic degree or diploma or a legally required certification or license.[4] Each applicant then has 15 days to respond to any aspect of the enrollment submissions. Once this response period has expired, the Commission compares the figures to determine if any applicant's system reaches fewer than 80 percent as many students as another applicant's. If so, the application resulting in service to the fewer number of students is denied, and the remaining application is granted. If more than one applicant remains, the channels or channel capacity are evenly divided among the remaining applicants. Because the two applicants here did not reach an agreement regarding the use of the channels, we look to the enrollment figures submitted by each.

6. Although Adams included with its enrollment figures letters of intended use from receive sites outside of its jurisdiction, we cannot count the students from those sites because such letters must be filed prior to the "B" cut-off date of July 22, 1992.[5] Consequently, we will count only the 347 students enrolled at Adams itself. Hastings originally included in its application a single receive site, but added five additional sites in a timely amendment. In its response to our request for enrollment figures, Hastings subsequently indicated that for various reasons, three of these sites should not be considered for the purposes of counting enrollment. Thus, Hastings is credited with 796 students. Because the number of students credited to Adams, 347, is less than 80 percent of the number of students credited to Hastings, 796, the application of Adams will be denied, and Hastings will be authorized to operate facilities on channels B1-B4.

OTHER MATTERS

7. Hastings proposes to lease its excess capacity for non-ITFS use as permitted by Section 74.931 and has submitted a copy of its lease with Wireless Entertainment Network which conforms in all respects with the Commission's requirements. Additionally, there are no petitions to deny Hastings' application, and we find Hastings to be fully qualified and that a grant of Hastings' application will serve the public interest, convenience, and necessity.

8. Accordingly, IT IS ORDERED, That the application of Adams Central Junior-Senior High School (BPLIF-911101DA) IS DENIED, and the application of Hastings Catholic Schools (BPLIF-920424EI) IS GRANTED.

9. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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[3] Since the grid does propose some formal educational programming, however, Adams meets the basic programming requirements of Section 74.931(a) of our Rules.

[4] Only receive sites specified as of the "B" cut-off date may be used in determining the number of students served. *Third Report Recon., supra*. Moreover, applicants serving students other than their own must have submitted letters, also by the "B" cut-off date, from those receive sites indicating an intention to use the proposed service. 47 C.F.R. §74.911(c); *Third Report and Order*, 4 FCC Rcd at 4832. Specifically, those letters, to be signed by the administrator or authority responsible for curriculum planning, must indicate that the applicant's programming offerings have been viewed and that such programming will be incorporated in the sites' curricula. Further, the letters should discuss the types and amounts of programming expected to be used and an indication of the extent to which representatives from the various sites will participate in the planning, scheduling, and production of the programming. 47 C.F.R. §74.932, Note 2.

[5] Adams filed its letters on January 22, 1993.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

ZION LUTHERAN SCHOOL
Lenapah, Oklahoma — File No. BPLIF-911206DA

TYRO COMMUNITY CHRISTIAN SCHOOL
Tyro, Kansas — File No. BPLIF-920821DI

For Construction Permit and License in the Instructional Television Fixed Service on Channels D1, D2, D3, and D4

UNIFIED SCHOOL DISTRICT #445
Lenapah, Oklahoma — File No. BPLIF-911206DD

COPAN INDEPENDENT SCHOOL DISTRICT
Tyro, Kansas — File No. BPLIF-920821DH

For Construction Permit and License in the Instructional Television Fixed Service on Channels C1, C2, C3, and C4

MEMORANDUM OPINION AND ORDER

Adopted: May 12, 1993; **Released: May 20, 1993**

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of Zion Lutheran School (Zion) and Tyro Community Christian School (Tyro Christian) for a construction permit and license on Channels D1-D4 in the Instructional Television Fixed Service (ITFS). Also before the Commission are the above-captioned mutually exclusive applications of Unified School District #445 (Unified) and Copan Independent School District (Copan) for a construction permit and license on ITFS Channels C1-C4.[1] The applicants propose to serve areas in southeastern Kansas and northeastern Oklahoma. Because the operation of both Zion and Copan or both Unified and Tyro Christian would result in objectionable adjacent-channel interference, all four applications must be considered as one mutually exclusive group.

BASIC ELIGIBILITY

2. Both Zion and Unified are accredited by the Kansas State Department of Education and are applying within their jurisdictions to provide ITFS service to their students. Copan is accredited by the Oklahoma State Department of Education and is applying within its jurisdiction to provide ITFS service to its students. Additionally, as part of their proposals, Zion, Unified, and Copan have proposed formal educational programming. Consequently, those three applicants are qualified to be ITFS licensees.

3. Tyro Christian, however, has not fully demonstrated its qualifications with respect to serving students at accredited institutions. While Tyro Christian does propose to serve its own students, it states that it is not currently accredited. Question 3(b) of Section II of FCC Form 330 requires an applicant that is not accredited to list the accredited schools it intends to serve and those schools' accreditation information. Additionally, Section 74.932(a)(4) of the Rules requires that "[t]hose applicant organizations whose eligibility is established by service to accredited institutional or governmental organizations must submit documentation from proposed receive sites demonstrating that they will receive and use the applicant's formal educational programming." While Tyro Christian has provided accreditation information for its only other receive site, Copan, it has not submitted the appropriate letter of intended use. Consequently, Tyro Christian has not demonstrated that an accredited school is aware of the instructional programming Tyro Christian is offering and is willing to incorporate it in its curriculum. Accordingly, Tyro Christian's application must be dismissed.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

4. In cases of mutually exclusive applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of 12 merit points based on five criteria deemed to be most relevant in predicting which applicant would be best qualified to provide the service for which the ITFS spectrum has been established. *ITFS Second Report and Order in MM Docket No. 83-523*, 101 FCC 2d 49, 65-72 (1985); 74 C.F.R. Section 74.913. First, four points are awarded to local applicants.[2] Second, three points are awarded to applicants which are accredited schools, educational institutions, or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by that applicant of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for

[1] On August 12, 1992, Stephen Van Voorhis filed a consolidated informal objection against Unified and Zion. In view of the action being taken herein, that objection will be dismissed as moot.

[2] To be considered "local", an applicant must demonstrate that it is physically located in the community or metropolitan area where service is proposed. Additionally, an entity created by a state or local government for the purpose of serving formal educational needs is considered "local" throughout the area over which the entity's authority is intended to extend. *Second Report and Order, supra* at 59; 47 C.F.R. Section 74.932, Note 1.

specified levels of ITFS programming.[3] Fifth, one point is awarded to applicants which are existing Channel E or F licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

5. Under this comparative selection process, Zion, Unified, and Copan are each awarded points based on the following criteria:

Localism. Each of the three applicants is entitled to four points either because it is a school district having one or more receive site within its respective district or is a school serving its own students.

Accreditation. Zion, Unified, and Copan are each entitled to three points for being accredited.

Four-Channel Limitation. None of the applicants is the licensee of other ITFS facilities or is applying for additional channels other than the ones requested in the instant applications. Consequently, Zion, Unified, and Copan are all entitled to two points for remaining within the four-channel limitation.

Amount of Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid". Where amounts and types of programming proposed in an applicant's illustrative program schedule and in its programming grid are inconsistent, we will consider as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits such a level of programming. Question 5 of Section IV of FCC Form 330 requires applicants to indicate which of its educational programming will be for academic credit. Because Zion and Unified have not so indicated on their illustrative schedules, their per channel weekly averages of 24.4 hours of educational programming will be considered as non-formal. *Valley View Independent School District*, 7 FCC Rcd 7228 (1992). In contrast, Zion's and Unified's program grids propose four hours of formal educational programming per channel per week. While there are inconsistencies in the types of programming proposed, none of the amounts of programming reported by Zion and Unified reaches the threshold at which merit points are awarded. Consequently, Zion and Unified are entitled to no programming merit points. Both the illustrative schedule and programming grid of Copan propose an average of 22.5 hours of formal ITFS programming per channel per week. Thus, Copan is entitled to one programming merit point.

E- and F- Channel Group Relocation. None of the applicants is the current licensee of an E or F channel seeking to relocate to other channels. Consequently, this factor is inapplicable here.

Totals. Zion and Unified are each entitled to nine points for being local, being accredited, and for observing the four-channel limitation. Copan is entitled to ten points for being local, being accredited, for observing the four-channel limitation, and for proposing at least 21 hours of formal educational programming. Zion is the only eligible applicant for the "D" channel group and has a point total of nine. For the "C" channel group, Copan has the greater point total with ten. Operation of both Zion and Copan, however, would result in objectionable interference. Because Copan has the higher point total, it is the selectee.

OTHER MATTERS

6. Copan proposes to lease its excess capacity for non-ITFS use, as permitted by Section 74.931, to Skylink Cablevision, Inc. The applicant has submitted a copy of its lease, which conforms in all respects with the Commission's requirements. Additionally, no petitions to deny have been filed against Copan's application. Consequently, we find Copan to be fully qualified and conclude that grant of its application would serve the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED, That the above-captioned application of Tyro Community Christian School IS DISMISSED, the above-captioned applications of Zion Lutheran School and Unified School District #445 ARE DENIED, the informal objection filed against Unified's and Zion's applications IS DISMISSED as moot, and the above-captioned application of Copan Independent School District IS GRANTED.

8. Further, the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[3] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ONE CALL COMMUNICATIONS, INC.,
Complainant,

v.

SOUTH CENTRAL BELL TELEPHONE COMPANY, File No. E-90-193
and
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, File No. E-90-194
Defendants.

ORDER

Adopted: May 14, 1993; Released: May 20, 1993

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On May 18, 1990, One Call Communications, Inc. (One Call) filed the above-captioned formal complaints against defendants seeking damages resulting from defendants' alleged violations of the Commission's rate of return prescription for the period January 1, 1987 through December 31, 1988. On April 27, 1993, however, One Call and defendants filed a joint motion to dismiss the complaints with prejudice stating that the parties have agreed to a settlement which disposes of all issues raised in the above-captioned complaints[1]

2. We are satisfied that dismissal of the complaints will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.[2]

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated by Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that One Call's and defendants' Joint Motion to Dismiss IS GRANTED.

4. IT IS FURTHER ORDERED that the Application for Review filed on March 7, 1991 by One Call IS DISMISSED AS MOOT.

5. IT IS FURTHER ORDERED that the Petition for Reconsideration filed on April 14, 1993 by defendants IS DISMISSED AS MOOT insofar as it relates to the above-captioned complaints.

6. IT IS FURTHER ORDERED that the above-captioned complaint proceedings ARE DISMISSED WITH PREJUDICE and ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau

[1] On March 15, 1993, the Commission released a Memorandum Opinion and Order resolving the above-captioned complaints and directing the defendants to pay monetary damages. Memorandum Opinion and Order, FCC 93-75, 8 FCC Rcd 1876 (1993) (*MO&O*). On April 14, 1993, defendants filed a petition for reconsideration of the *MO&O*. One Call and defendants, however, have since settled all issues between them raised in the complaints, including the issue of damages. The parties now move that we dismiss with prejudice the complaints and the pending petition for reconsideration of the *MO&O* relating to the complaints. Accordingly, since the parties have settled disputes between them raised by the complaints and petition for reconsideration, we will dismiss these proceedings with prejudice.

[2] One Call filed an application for review of an action holding the above-captioned complaints in abeyance. *See Order*, 6 FCC Rcd 654 (Com. Car. Bur. 1991). Because the underlying dispute has been resolved by agreement between the parties, the application for review is moot and will be dismissed accordingly.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TFN CORP.,
Complainant,

v. File No. E-90-209

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY,
Defendant.

ORDER

Adopted: May 14, 1993; Released: May 20, 1993

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On May 18, 1990, TFN Corp. (TFN) filed the above-captioned formal complaint against Southern Bell Telephone and Telegraph Company (Southern Bell) seeking damages resulting from Southern Bell's alleged violations of the Commission's rate of return prescription for the period January 1, 1987 through December 31, 1988. On April 27, 1993, however, TFN and Southern Bell filed a joint motion to dismiss the complaint with prejudice stating that the parties have agreed to a settlement which disposes of all issues raised in the above-captioned complaint.[1]

2. We are satisfied that dismissal of the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.[2]

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated by Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that TFN's and Southern Bell's Joint Motion to Dismiss IS GRANTED.

4. IT IS FURTHER ORDERED that the Application for Review filed on March 7, 1991 by TFN IS DISMISSED AS MOOT.

5. IT IS FURTHER ORDERED that the Petition for Reconsideration filed on April 14, 1993 by Southern Bell IS DISMISSED AS MOOT insofar as it relates to the above-captioned complaint.

6. IT IS FURTHER ORDERED that the above-captioned complaint proceeding IS DISMISSED WITH PREJUDICE and IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau

[1] On March 15, 1993, the Commission released an order resolving the above-captioned complaint and directing the defendant to pay monetary damages. Memorandum Opinion and Order, FCC 93-75, 8 FCC Rcd 1876 (1993) (*MO&O*). On April 14, 1993, Southern Bell filed a petition for reconsideration of the *MO&O*. TFN and Southern Bell, however, have since settled all issues between them raised in the complaint, including the issue of damages. The parties now move that we dismiss with prejudice the complaint and the pending petition for reconsideration of the *MO&O* relating to the complaint. Accordingly, since the parties have settled disputes between them raised by the complaint and the petition for reconsideration, we will dismiss the proceeding with prejudice.

[2] TFN filed an application for review of an action holding the above-captioned complaint in abeyance. *See Order*, 6 FCC Rcd 658 (Com. Car. Bur. 1991). Because the underlying dispute has been resolved by agreement between the parties, the application for review is moot and will be dismissed accordingly.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

DIVERSIFIED TEL-COM, INC.
(d/b/a BIZ-TEL),
Complainant,

v. File No. E-90-257

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY,
Defendant.

ORDER

Adopted: May 14, 1993; Released: May 20, 1993

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On May 18, 1990, Diversified Tel-Com, Inc. (d/b/a Biz-Tel) (Diversified) filed the above-captioned formal complaint against Southern Bell Telephone and Telegraph Company (Southern Bell) seeking damages resulting from Southern Bell's alleged violations of the Commission's rate of return prescription for the period January 1, 1987 through December 31, 1988. On April 27, 1993, however, Diversified and Southern Bell filed a joint motion to dismiss the complaint with prejudice stating that the parties have agreed to a settlement which disposes of all issues raised in the above-captioned complaint.[1]

2. We are satisfied that dismissal of the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.[2]

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated by Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that Diversified's and Southern Bell's Joint Motion to Dismiss IS GRANTED.

4. IT IS FURTHER ORDERED that the Application for Review filed on March 7, 1991 by Diversified IS DISMISSED AS MOOT.

5. IT IS FURTHER ORDERED that the Petition for Reconsideration filed on April 14, 1993 by Southern Bell IS DISMISSED AS MOOT insofar as it relates to the above-captioned complaint.

6. IT IS FURTHER ORDERED that the above-captioned complaint proceeding IS DISMISSED WITH PREJUDICE and IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau

[1] On March 15, 1993, the Commission released an order resolving the above-captioned complaint and directing the defendant to pay monetary damages. Memorandum Opinion and Order, FCC 93-75, 8 FCC Rcd 1876 (1993) (*MO&O*). On April 14, 1993, Southern Bell filed a petition for reconsideration of the *MO&O*. Diversified and Southern Bell, however, have since settled all issues between them raised in the complaint, including the issue of damages. The parties now move that we dismiss with prejudice the complaint and the pending petition for reconsideration of the *MO&O* relating to the complaint. Accordingly, since the parties have settled disputes between them raised by the complaint and the petition for reconsideration, we will dismiss the proceeding with prejudice.

[2] Diversified filed an application for review of an action holding the above-captioned complaint in abeyance. *See Order*, 6 FCC Rcd 701 (Com. Car. Bur. 1991). Because the underlying dispute has been resolved by agreement between the parties, the application for review is moot and will be dismissed accordingly.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Teleport Communications Group Operating Companies Tariff F.C.C. No. 1	Transmittal No. 1
Bay Area Teleport Tariff F.C.C. No. 1	Transmittal No. 1
MFS Telecom, Inc. Tariff F.C.C. No. 1	Transmittal No. 1
Eastern Telelogic Corp. Tariff F.C.C. No. 1	Transmittal No. 1
M H Lightnet Inc. Tariff F.C.C. No. 1	Transmittal No. 1.

ORDER

Adopted: May 10, 1993; Released: May 11, 1993

By the Acting Chief, Common Carrier Bureau:

1. On February 8, 1993, Teleport Communications Group Operating Companies (Teleport Group) filed a tariff under Transmittal No. 1, which tariff became effective the following day, February 9. On February 18, 1993, the Bell Atlantic Telephone Companies (Bell Atlantic) filed a petition to reject or, in the alternative, a motion for an order to show cause, together with a motion to accept a late-filed petition. Southwestern Bell Telephone Company (Southwestern) filed comments on March 5, 1993, in support of the Bell Atlantic petition, together with an accompanying motion to accept late-filed comments. On March 1, 1993, Teleport Group filed a reply and opposition to the Bell Atlantic petition and motion.

2. On February 19, 1993, Bay Area Teleport (Bay Area) filed a tariff under Transmittal No. 1, which tariff became effective February 22, 1993. Bell Atlantic filed a petition to reject that transmittal on February 26, 1993, to which Bay Area filed its opposition on March 8, 1993.

3. MFS Telecom, Inc. (MFS) filed a tariff on February 22, 1993, under Transmittal No. 1, which tariff became effective the following day, February 23. In opposition to that transmittal, New York Telephone Company and the New England Telephone and Telegraph Company (NYNEX) filed on March 1, 1993, a petition to reject or, in the alternative, a motion for an order to show cause. On March 1, 1993, Bell Atlantic filed a petition to reject the MFS transmittal. On March 8, 1993, MFS filed its opposition to the NYNEX and Bell Atlantic petitions. Southwestern filed comments on March 12, 1993, in support of the Bell Atlantic petition together with a motion to accept late-filed comments.

4. On February 25, 1993, Eastern Telelogic Corp. (Eastern), filed a tariff under Transmittal No. 1, which tariff became effective the following day, February 26. Bell Atlantic filed a petition to reject that transmittal on March 4, 1993, and Eastern filed its opposition to that petition on March 15, 1993.

5. On March 4, 1993, M H Lightnet, Inc. (Lightnet) filed a tariff under Transmittal No. 1, which tariff became effective that same date. Bell Atlantic filed a petition to reject that transmittal on March 11, 1993, and Lightnet filed its opposition to that petition on March 22, 1993.

6. In its petitions to reject each of the above transmittals,[1] Bell Atlantic contends that the Commission has the authority to reject a tariff that has already become effective. Bell Atlantic Petitions at 1 n.2 (*citing Interstate Commerce Commission v. American Trucking Ass'ns*, 467 U.S. 354 (1984) (*ICC v. ATA*). In their oppositions to the Bell Atlantic petitions, Bay Area, MFS, Eastern, and Lightnet claim no precedent exists for Commission rejection of an effective tariff and that *ICC v. ATA* has not been followed by the Commission. Bay Area Opposition at 1-2; MFS Opposition at 1-2; Eastern Opposition at 1-2; Lightnet Opposition at 1-2. Teleport Group similarly argues that Bell Atlantic's petition for rejection of the above Teleport Group tariff is not appropriate because that tariff is already in effect. Teleport Group Opposition at 2-3 (*citing inter alia American Broadcasting Cos., Inc., v. FCC*, 662 F.2d 155, 158 (1981); Southwestern Bell Telephone Co., 3 FCC Rcd 2339 (1988).

7. Earlier this year, the Commission waived certain notice requirements in its rules to facilitate tariff filings by nondominant carriers.[2] Accordingly, each of the above-captioned tariffs was filed on short notice and became effective as originally scheduled. Each of the pending petitions for rejection was filed after the relevant tariff had become effective. Once a tariff is filed and becomes effective, the Commission may not reject it summarily.[3] The Communications Act authorizes the Commission to suspend and investigate a tariff before it

[1] Bell Atlantic claims that these tariffs violate various provisions of the Communications Act and, on that basis, urges that they be rejected. *See e.g.*, Bell Atlantic Petition for Rejection of Teleport Group Tariff at 4-10. Similarly, NYNEX claims the MFS tariff does not comply with the Act and should therefore be rejected. NYNEX Petition to Reject at 5-6.

[2] In a Public Notice released February 2, 1993, the Commission waived for a period of 60 days the 14-day notice requirements set forth in Section 61.58(b) of the Commission's Rules, 47 C.F.R. § 61.58(b), so that nondominant carriers previously subject to forbearance might file their tariffs with the Commission on less than 14 days' notice without requesting special permission. Commission Grants Interim, Blanket Rule Waiver to Permit Certain Nondominant Common Carriers to File Tariffs on Less Than 14 Days Notice, Public Notice, FCC 93-71 (released Feb. 2, 1993). In a March 1993 order, the Bureau extended to June 4, 1993, the period during which domestic nondominant common carriers may file tariffs on less than 14 days' notice. Cellular Telecommunications Industry Association, Order, DA 93-372 (released Mar. 31, 1993).

[3] Bell Atlantic is incorrect in its reliance on *ICC v ATA* for the proposition that this Commission may summarily reject a

takes effect[4] or to initiate a proceeding after the tariff takes effect to ascertain the lawfulness thereof.[5] Accordingly, to the extent these petitions seek summary rejection of effective tariffs, they seek a remedy beyond the scope of our authority.

8. In the alternative Bell Atlantic requests that the Commission order the Teleport Group to show cause why its tariff should not be cancelled and why the Teleport Group should not cease providing interstate common carrier services until a lawful tariff is in effect. Bell Atlantic Petition at 1 and 9. Similarly, NYNEX requests that MFS be ordered to show cause why the MFS tariff should not be cancelled and why MFS should not cease providing interstate common carrier services until a lawful tariff is in effect. NYNEX Petition at 1 and 6.

9. The petitioners do not identify the statutory authority for the relief they request.[6] Since Section 204 of the Act, 47 U.S.C. § 204, applies only if we initiate a proceeding before the tariff takes effect, we construe the petitions (and the requests that we issue orders to show cause) as requests for a hearing under Section 205 and 403.[7] 47 U.S.C. §§ 205, 403, to ascertain the lawfulness of these tariffs under the Communications Act.[8] But, the determination whether to commence a proceeding under any of these provisions of the Act rests in the discretion of the Commission.[9] On the basis of the record before us, the parties have not demonstrated a basis for initiating such a proceeding. Moreover, when a tariff has taken effect without suspension, a complaint under Section 208 of the Act, which permits the Commission to award damages, is the preferred procedural option. When a Section 208 proceeding is available to a petitioner seeking action after a tariff has taken effect, we will not be inclined to exercise our discretion in favor of initiating a proceeding under other statutory sections. Therefore, we deny the rejection petitions and the alternative motions to show cause filed by Bell Atlantic and by NYNEX.

10. Accordingly, IT IS ORDERED that the petition to reject Teleport Communications Group Operating Companies Transmittal No. 1 filed by the Bell Atlantic Telephone Companies IS DENIED and the accompanying motion to accept a late-filed petition IS DISMISSED.

11. IT IS FURTHER ORDERED that the motions to accept late-filed comments filed by Southwestern Bell Telephone Company ARE DISMISSED.

12. IT IS FURTHER ORDERED that the petition to reject Bay Area Teleport Transmittal No. 1 filed by the Bell Atlantic Telephone Companies IS DENIED.

13. IT IS FURTHER ORDERED that the petition to reject MFS Telecom, Inc., Transmittal No. 1 filed by the Bell Atlantic Telephone Companies IS DENIED.

14. IT IS FURTHER ORDERED that the petition to reject MFS Telecom, Inc., Transmittal No. 1 filed by the New York Telephone Company and the New England Telephone and Telegraph Company IS DENIED.

15. IT IS FURTHER ORDERED that the petition to reject Eastern Telelogic Corp. Transmittal No. 1 filed by the Bell Atlantic Telephone Companies IS DENIED.

16. IT IS FURTHER ORDERED that the petition to reject M H Lightnet, Inc., Transmittal No. 1 filed by the Bell Atlantic Telephone Companies IS DENIED.

17. IT IS FURTHER ORDERED that the alternative motion for an order to show cause filed by the Bell Atlantic Telephone Companies with reference to Teleport Communications Group Operating Companies Transmittal No. 1 IS DENIED.

18. IT IS FURTHER ORDERED that the alternative motion for an order to show cause filed by the New York Telephone Company and the New England Telephone and Telegraph Company with reference to MFS Telecom, Inc., Transmittal No. 1 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

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tariff that has already become effective. In *ICC v. ATA*, the ICC had expressly claimed, and the Supreme Court thereafter upheld, a limited right to reject retroactively effective ICC tariffs in instances involving substantial violation of existing rate-bureau agreements. Given that this Commission does not have a system of rate agreements such as those existing in that case, the Commission cannot rely on that precedent to reject the effective tariffs captioned above.

[4] *See* Section 204 of the Act, 47 U.S.C. § 204.

[5] *See* Sections 205 and 403 of the Act, 47 U.S.C. §§ 205, 303.

[6] The exception is Bell Atlantic who references Section 4(i) of the Act, 47 U.S.C. § 154(i). Bell Atlantic Petitions at 2 n.2 (claiming that ICC has authority to reject tariffs under the Interstate Commerce Act "equivalent to the Commission Act's § 4(i)").

[7] Under Section 403, the Commission has broad authority to institute a proceeding on its own motion to enforce the provisions of the Act.

[8] Petitions challenging a tariff under Section 205 or under Section 403 can be filed any time after the relevant tariff is filed. As we construe the rejection petitions as challenges to the above tariffs under these sections, the related Bell Atlantic, NYNEX, and Southwestern Bell motions to accept late-filed pleading become moot. Accordingly, we dismiss these motions.

[9] Under Section 1.701 of the Commission's Rules, 47 C.F.R., § 1.701, the Commission "*may* commence any proceeding within its jurisdiction against any common carrier by serving upon the carrier an order to show cause (emphasis added)." *See also* Curtin Call Communications, Inc., FCC 76-1107 (released Nov. 14, 1976) (Commission declines to issue show cause order noting sound judgment and discretion required in such matters).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-305

In the Matter of

Amendment of the rules relating to permissible uses of the vertical blanking interval of broadcast television signals.	RM-8066 RM-8067

REPORT AND ORDER

Adopted: May 5, 1993; Released: May 10, 1993

By the Commission:

INTRODUCTION

1. The Commission herein amends Sections 73.682 and 73.699 of its Rules to provide for optional transmission of a ghost-canceling reference ("GCR") signal on line 19, and enhanced closed-captioning and other broadcast-related information on line 21, field 2, of the vertical blanking interval ("VBI").

BACKGROUND

2. The *Notice of Proposed Rule Making*[1] (*"Notice"*) in the above-entitled matter was issued in response to petitions from the Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") and the Advanced Television Systems Committee ("ATSC"). The former (in RM-8066) requested amendment of the Commission's Rules to provide for enhanced closed-captioning and other broadcast-related information services on line 21, field 2 of the VBI. The latter (in RM-8067) requested amendment of the Rules to substitute a GCR signal in place of the vertical interval reference ("VIR") signal currently transmitted on line 19 of the VBI. Both proposals received widespread broadcast industry support. The two petitions are being addressed in this consolidated rulemaking proceeding because each required a change in policy concerning use of the VBI and because both are a matter of high priority, inasmuch as they would significantly enhance conventional NTSC television service.

COMMENT SUMMARY

3. All of the parties filing comments in response to the *Notice* expressed support for one or both of the proposals. Thus, EEG Enterprises ("EEG"), Motorola, Inc. and the National Captioning Institute ("NCI") supported the line 21 proposal. Mitsubishi Consumer Electronics America, Inc ("Mitsubishi"), the Lloyd E. Rigler-Lawrence E. Deutsch Foundation, Thompson Consumer Electronics and the WGBH Educational Association ("WGBH"), while interested principally in the line 21 proposal, also made brief statements supporting the line 19 proposal. The Advanced Television System Committee ("ATSC") and the North American Philips Corporation ("Philips") supported the line 19 proposal. A. C. Nielsen ("Nielsen"), the Association for Maximum Service Telecasters ("MSTV"), Capital Cities/ABC ("CC/ABC"), the Electronic Industries Association's Consumer Electronic Group ("EIA/CEG") and the National Association of Broadcasters ("NAB") supported both proposals. Reply comments were filed by EIA/CEG, Caption America, Cohen, Dippel and Everist, P.C. ("CDE"), Nielsen, Mitsubishi, MSTV, NCI and WGBH. The reply comments of Caption America supported the line 21 proposal and are discussed at length, *infra*. The reply comments of CDE support the comments of CC/ABC. The other reply comments reinforce initially-held positions.

4. *Line 19.* ATSC, MSTV, NAB and Nielsen supported the adoption of Philips' GCR signal as the industry standard for NTSC television. Most of the commenters noted the exhaustive testing which led to the unanimous selection of the Philips' signal as being clearly superior to the other GCR signals tested. Philips observed that while it was possible that a better GCR signal might someday be discovered, such an eventuality was unlikely during the expected lifetime of NTSC television in the United States. Philips further noted the flexibility inherent in its system, which will permit hardware designers to choose different conditions of speed and accuracy.[2] NAB urged the Commission to proceed with the regulatory approach suggested in the *Notice*, which was to reserve line 19 for the optional but exclusive of the Philips GCR signal by means of setting forth its technical parameters in an OET Bulletin, with a reference to the Bulletin being placed in the Rules.[3]

5. However, both NAB and CC/ABC noted that while the vertical interval reference ("VIR") signal that would be displaced from line 19 by the GCR signal was no longer used by the public, it was useful to broadcasters in maintaining television picture color quality in studio-transmitter links and in other portions of the program delivery system. This opinion was reinforced by the reply comments of CDE. Therefore, CC/ABC asked the Commission to permit relocation of the VIR signal to any of VBI lines 10 through 16 without specific authorization, inasmuch as lines 17 through 21 were generally used for other purposes.[4] Moving the VIR signal to another line was supported by NAB as being easily achieved using modern VBI signal inserter equipment.

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[1] 8 FCC Rcd 90 (1993). The *Notice* provides detailed definitions and descriptions of the technical terms used in this proceeding. To conserve space they are not reiterated here.

[2] Philips noted that reducing or eliminating airplane flutter may require greater speed, and dealing with fixed multipath conditions may require more accuracy.

[3] A very similar approach was taken when the Commission adopted the rules for television stereophonic audio transmission in Docket No. 21323.

[4] Section 73.682(a)(21) permits lines 17 through 20 to be used for the transmission of test signals, cue and control signals and identification signals.

6. *Line 21.* Commenters addressing this proposal gave it their complete support. CC/ABC observed that using field 2 of line 21 would permit captioned information to be delivered at different speeds to suit different reading levels, as well as the possibility of captioning in a second language. EEG stated that caption decoder circuits being built into new TV receivers and VCRs already have the capability to respond to line 21 signals in field 2 provided the data format is the same as that in field 1.

7. However, EEG and WGBH noted that the Television Data System Committee ("TDSS"), a task force operating under EIA/CEG, has recommended some field 2 code changes which differ from the current line 21, field 1 code tables. The changes may prevent some of the TV receivers initially marketed under the Television Decoder Circuitry Act of 1990 Act from being able to receive line 21, field 2 information, but would permit the use of caption decoder technology for a wide range of valuable new Extended Data Services ("EDS").[5]

8. The Commission, in the *Notice,* specifically solicited comments on whether interference might result between enhanced closed-captioning on line 21, field 2 and "special signals" permitted on line 22, which are used for commercial and program identification. Nielsen, WGBH and EIA/CEG and Caption America addressed this question. All expressed the view that no adverse interaction was likely. WGBH explained that even in cases where "special signals" had inadvertently been placed on line 21, field 2, captioning on field 1 continued to be received without degradation. Questions in the *Notice* on whether any potential problems might be expected in implementing either the line 21 or the line 19 proposal were answered in the negative, with the exceptions of concerns expressed by NCI, *infra.*

9. The universal practice now in encoding line 21 is to intermix captioning and text data service information, with priority given to captioning automatically by the encoder on a real time basis. The *Notice* mentioned a proposal by NCI (in its comments on RM-8066) that the Commission include definitions of "captions," "text," and "extended data service ("EDS") information" in the Rules in order to clarify the priorities which should be followed in their transmission. NCI continued to support the proposed definitions in its comments, with the apparent view that captioning should always have priority on line 21, that caption-related text should have secondary priority, and that EDS should be tertiary (or last) in priority. However, EIA/CEG, Caption America, Mitsubishi, Thompson and WGBH expressed the opinion that the proposed definitions were ambiguous and not necessary to ensure captioning priority. MSTV initially supported NCI in its comments, but suggested deferring adoption of NCI's definitions in its reply comments.

10. Caption America observed that:

> "Currently, transmission priority is given to captioning on Line 21, Field 1. Priority means that caption data, once encoded, may not be deleted and replaced by any other data. This prohibition applies even if the caption data is to be buffered and reinserted at some later time. To afford this same priority to Text Mode data, on either field, would necessarily mean that Text, once encoded, cannot be deleted downstream. Such a rule would give Text Mode data the same protection as Caption mode data, a status that Text Mode does not enjoy under Commission rules governing Line 21, Field 1..."[6]

Caption America questions how prioritizing text mode data (which it states is virtually never program-related) will enhance closed-captioning. Moreover, it variously refers to NCI's proposed definitions as "vague," "unusable," "inaccurate" and "unclear."[7] However, it does support NCI in the belief that the term "additional text" in proposed Section 73.682(a)(22)(i) is misleading in that a caption is not a form of "text," as the proposed rule's use of the term "additional text" would imply. Thus, Caption America believes that the proposed rule should be amended to replace the term "additional text" with "text-mode data."

11. Lastly, NCI expresses concern that the addition of EDS information to already existing line 21, field 2 captions may offset the timing at which the captions were intended to be displayed with their associated television program.[8] NCI argues that:

> "... the proposed rule permits a broadcaster to provide 'additional text and extended data service' on a 'on a space available basis' without *any* qualification on the effect of the presence or insertion of EDS data on a line 21, field 2 caption's appear time."[9]

To preclude any potential problems in this regard, NCI recommends that the final rule contain the requirement that any text service or extended data service "not noticeably offset the time" in which a line 21 caption is to appear.[10]

12. Caption America shares NCI's concern about possible delay in appear time but believes that NCI's proposed solution is unnecessary, too vague to be of value and not a matter which requires regulation. It notes that without defining what "noticeably offset" means, NCI's proposed rule is meaningless. Caption America further states that:

> "We do not believe the Commission needs to provide regulation in the area of caption delay because captioners and encoder manufacturers have already codified adequate policies through the EIA/CEG's development of recommended practices. These recommendations take into account the complexities

[5] The commenters do not appear to consider this compatibility problem very significant. The modification of initially-marketed closed-captioning equipped receivers is not discussed in the comments, but may be possible without significant cost.

[6] Caption America reply comments, page 2.

[7] *Id.*, page 3.

[8] NCI refers to this as the "appear time" (Comments, page 3).

[9] *Id.*, page 3.

[10] *Id.*, page 7.

of data creation, insertion and buffering in a way much more suited to actual practice than NCI's proposed language."[11]

In conclusion, Caption America agrees with the majority of commenters who believe that the rule should be adopted as proposed in the *Notice*, with the exception of the minor revision discussed in paragraph 10, *supra*.

DISCUSSION

13. *Line 19*. We agree with the commenters that line 19 should be reserved for the optional but exclusive use of the Philips GCR signal. We believe that this action is highly desirable as a means of encouraging initial production of ghost-canceling-equipped TV receivers which will offer an immediate benefit to television audiences. The presence of any other signal on line 19 has the potential of confusing the ghost-canceling circuitry. Therefore, none will be permitted, including the VIR signal, after June 30, 1994. This delay is provided to give broadcasters ample time to relocate the VIR signal to another VBI line, if they desire, prior to the widespread availability of GCR-equipped TV receivers. Nevertheless, broadcasters may transmit the GCR signal immediately, if they desire.[12]

14. CC/ABC requests permission to employ the VIR signal on any of VBI lines 10 through 16. Under our current rules, those lines, plus lines 17, 18 and 20, may be used for telecommunications services such as the transmission of data and processed information. See Sections 73.646 and 73.682(a)(23). Further, these lines may also be used for other purposes upon prior approval by the Commission. Additionally, lines 17 through 20 may be used for the transmission of test signals, cue and control signals and identification signals. As a special case of a test signal, line 19 has been reserved for the transmission of the VIR signal, except for the developmental transmission of the GCR signal as explained in Footnote 12, *supra*.

15. With regard to modulation level, lines 17, 18 and 20 have a limit of 80 IRE[13] when used for telecommunications services, but up to 120 IRE when used for test signals. The VIR on line 19 is limited to 90 IRE. Our rules do not specify what limits would be appropriate if lines 10 through 16 were used for other purposes, such as the transmission of test signals (telecommunications services are limited to 70 IRE on lines 10 through 12 and 80 IRE on lines 13 through 16). Notwithstanding these modulation limits, neither test signals nor telecommunications signals may degrade the regular program transmission of a television broadcast station.

16. Because the VIR signal apparently retains important value as an internal quality control technique and because the self-interests of broadcasters, in conjunction with our existing rules, should be adequate to prevent harm, we find that it is in the public interest to offer additional flexibility in the employment of VIR signals. Accordingly, pursuant to Section 73.682(a)(23)(vi), we approve the use of lines 10 through 16 for VIR signals at a modulation level not to exceed 90 IRE, provided that no observable degradation is caused to any portion of the visual or aural signals. We remind all parties that transmission of telecommunications services and test signals in the VBI is elective and of an ancillary nature. The resolution of any conflicts which may arise from the transmission of multiple services and signals is the responsibility of station licensees.

17. *Line 21*. We have reviewed the provisions of Section 73.682(a)(22), which relate to captioning on line 21, field 1 (and the first half of field 2) and believe they are satisfactory in their present form. First, subparagraph (ii) provides that when captioning is not transmitted, data may be transmitted in the same format provided it is of a broadcast nature. We believe Section 73.682 (which provides for the broadcast of captioning information) and Section 15.119 (which implements the provisions of the Television Decoder Circuitry Act of 1990[14]) make it very clear that line 21 is to be used primarily for captioning service.

18. Therefore, we have no reason to expect that the provisions for extended data service on line 21, field 2 will significantly alter the fundamental character of line 21 in terms of captioning priority. We believe broadcasters will continue to use line 21 responsibly for services in a manner consistent with the intent of the rules. For these reasons and because of the ambiguities noted by Caption America, we do not believe that the definitions suggested by NCI are necessary. Therefore, we are adopting the rule as proposed, with the exception of the editorial revision suggested by Caption America.

19. We also agree with Caption America on the matter of caption "appear time." We do not believe, based on current industry practices and typical encoding equipment design that extended data services will significantly delay caption presentation.

20. Nonetheless, the Commission believes NCI's comprehensive response to the request for information concerning "any unforseen or overlooked problems or circumstances"[15] relative to the provision of enhanced closed-captioning on line 21, field 2 has, quite appropriately, identified potential problems which could arise in the future. Although we decline to adopt a specific "appear time" standard at this early stage of regulatory supervision, we do so because of existing industry practice, which appears to adequately address this concern. In the unlikely event that any unexpected technical problems arise, or any abuse of the new enhanced captioning rules develops, we intend to revisit this matter and take appropriate action.

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[11] Caption America reply comments, page 5.

[12] The Commission suspended enforcement of line 19 restrictions contained in Section 73.682(a)(21)(iv) in an *Order* adopted October 22, 1992. Therefore, transmitting the GCR signal is permissible already, even in advance of the effective date of the new rules.

[13] "IRE" refers to a unit of linear scale measurement in which the relative amplitudes of the components of a television signal are referenced to zero at blanking level, with picture information falling in the positive domain, and synchronizing information in the negative domain.

[14] 6 FCC Rcd 2419 (1991).

[15] *Notice*, paragraph 11.

CONCLUSION

21. The comments and reply comments filed in this proceeding clearly ratify the proposals made in the *Notice*. We conclude that only the substitution of "text mode data" for "additional text" in proposed Section 73.682(a)(22)(i) is necessary. Additionally, we are revising Section 73.682(a)(21)(iv) to permit transmission of the VIR signal on lines 10 through 16. Therefore, with the exceptions noted, the Rules are being revised as proposed in the *Notice*. The technical standards for the ghost-canceling reference signal are being released in OET Bulletin No. 68, concurrently with this *Report and Order*.

Regulatory Flexibility Act

22. A Final Regulatory Flexibility Analysis is contained in Appendix B of this *Report and Order*.

ORDERING CLAUSE

23. Therefore, IT IS ORDERED that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that effective June 30, 1993, Part 73 of the Commission's Rules and Regulations IS AMENDED as set forth in Appendix A. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

Additional Information

24. For additional information on this proceeding, contact James E. McNally, Jr., Mass Media Bureau, (202) 632-9660.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303

2. Section 73.682 is amended by revising paragraphs (a)(21)(iv) and (a)(22)(i), (a)(22)(i)(A), (a)(22)(i)(B) and by removing paragraphs (a)(22)(i)(C) and (a)(22)(i)(D) as follows:

§73.682 TV transmission standards.

(a) * * *

(21) * * *

(iv) Regardless of other provisions of this paragraph, after June 30, 1994, Line 19, in each field, may be used only for the transmission of the ghost-canceling reference signal described in OET Bulletin No. 68. Notwithstanding the modulation limits contained in paragraph (a)(23)(i) of this section, the vertical interval reference signal formerly permitted on Line 19 and described in Figure 16 of §73.699, may be transmitted on any of lines 10 through 16 without specific Commission authorization, subject to the conditions contained in paragraphs (a)(21)(ii) and (a)(22)(ii) of this section.

(22)(i) Line 21, in each field, may be used for the transmission of a program-related data signal which, when decoded, provides a visual depiction of information simultaneously being presented on the aural channel (captions). Such data signal shall conform to the format described in Figure 16 of §73.699 and may be transmitted during all periods of regular operation. On a space available basis, line 21 field 2 may also be used for text-mode data and extended data service information.

Note: The signals on Fields 1 and 2 shall be distinct data streams, for example, to supply captions in different languages or at different reading levels.

(A) A decoder test signal consisting of data representing a repeated series of alphanumeric characters may be transmitted at times when no program-related data is being transmitted.

(B) The data signal shall be coded using a non-return-to-zero (NRZ) format and shall employ standard ASCII 7 bit plus parity character codes.

Note: For more information on data formats and specific data packets, see EIA-608, "Line 21 Data Services for NTSC," available from the Electronics Industries Association.

* * * * *

3. Section 73.699 is amended by removing Figures 17B and 17C and by redesignating Figure 17A as Figure 17.

APPENDIX B

FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by §603 of the Regulatory Flexibility Act, the Commission has prepared the following Final Regulatory Flexibility Analysis (FRFA) of the expected impact on small entities of the proposals suggested in this document. The Secretary shall send a copy of this *Report and Order* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981)).

Reason for Action

The rules amended in the *Report and Order* modify permissible use of the vertical blanking interval of broadcast television signals.

Objectives

This action is intended to improve the general quality of television service by providing for enhanced closed-captioning service and, secondary to that, other broadcast-related information services capable of depiction in an alpha-numeric format. Additionally, the rules permit the transmission of a special ghost-canceling reference signal that when used with TV receivers having the proper

decoding circuitry, could eliminate much, if not all, picture degradation due to the reception of reflected, low amplitude TV signals.

Legal Basis

Authority for the actions taken in the *Report and Order* may be found in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 and 303.

Reporting, Recordkeeping, and Other Compliance Requirements

None.

Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule

None.

Description, Potential Impact and Number of Small Entities Involved

The services permitted by the new rules are entirely optional in character. However, their appeal to the public is likely to be such that most TV broadcast licensees will want to obtain the equipment with which to provide them. Thus, as a practical matter, the new rules would have an impact on some 1,500 licensees.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives

There are none.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 91-322

In the Matter of

Amendment of Part 90 of the Commission's Rules to Permit Exclusive-Use Systems to Conduct Secondary Fixed Signaling and Alarm Operations Without Conforming to the Provisions of Section 90.235. RM-7408

MEMORANDUM OPINION AND ORDER

Adopted: May 5, 1993; Released: May 21, 1993

By the Commission:

I. INTRODUCTION

1. On September 8, 1992, the Utilities Telecommunications Council (UTC) filed a Petition for Clarification and/or Reconsideration (Petition)[1] of the *Report and Order* in this proceeding.[2] Petitioner asks that we clarify that the rules we adopted in the *Report and Order* regarding secondary fixed signaling and alarm operations apply to the 220-222 MHz band.[3] For the reasons that follow, we are amending our Rules in order to make clear that the policies we adopted in the *Report and Order* apply to licensees operating in the 220-222 MHz band.

II. BACKGROUND

2. Part 90 frequencies are allocated primarily for the purpose of meeting the private land mobile rather than fixed communications needs of licensees. Pursuant to 47 C.F.R. § 90.235, however, secondary fixed signaling and alarm operations above 25 MHz may be conducted by private land mobile radio licensees authorized under Part 90 of our Rules. Such secondary fixed operations, however, may only be conducted provided certain terms and conditions are met.[4] These provisions are designed primarily to protect co-channel users from interference on shared channels. In 1986, however, we permitted trunked Specialized Mobile Radio (SMR) systems and their end users to conduct secondary fixed signaling operations on a less restricted basis without complying with all of the Section 90.235 conditions because these systems operated on exclusive frequency assignments.

3. In the *Report and Order* in this proceeding, we amended our rules to permit not only trunked SMR licensees, but all private land mobile licensees operating on exclusive assignments to conduct secondary fixed signaling and alarm operations without being required to comply with all of the operational restrictions currently imposed by Section 90.235.[5]

III. DISCUSSION

4. In its Petition, UTC requests clarification as to whether, in the *Report and Order*, we intended to relax the Section 90.235 restrictions on secondary fixed signaling operations for systems licensed in the 220-222 MHz band.[6] If this was not the Commission's intention, UTC requests that we reconsider and permit licensees in the 220-222 MHz to be beneficiaries of our new policy.

5. The Section 90.235 limitations were adopted to reduce potential interference to mobile operations in a shared spectrum environment. Where systems are operating in an exclusive-use environment, such limitations are not necessary. As licensees in the 220-222 MHz band operate on exclusive assignments, it is appropriate that such licensees be permitted to conduct secondary fixed signaling operations without having to comply with the Section 90.235 restrictions.

6. No comments have been filed in response to the Petition. Comments to the *Notice of Proposed Rule Making* in this proceeding,[7] however, unanimously supported the proposal to relax restrictions on secondary fixed signaling operations by all types of private land mobile radio systems that are licensed for exclusive use. Commenters specifically indicated that systems in the 220-222 MHz band should be included in this category,[8] and we so hold in this Memorandum Opinion and Order.

IV. REGULATORY FLEXIBILITY ANALYSIS

7. A Final Regulatory Flexibility Analysis was prepared for the *Report and Order* in this proceeding. None of the rules adopted in this Memorandum Opinion and Order modify the effect this proceeding has on small businesses and it is, therefore, unnecessary for us to modify our Final Regulatory Flexibility Analysis. The full text of the Final Regulatory Flexibility Analysis released in the *Report and Order* is available for inspection during normal business hours in the FCC Dockets Branch, Room 230, 1919 M

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[1] Public Notice, Report No. 1913, 57 Fed. Reg. 48383, October 23, 1992.

[2] Report and Order, 7 FCC Rcd 4574 (1992).

[3] Petition at 3.

[4] Section 90.235 identifies such restrictions, including matters relating to bandwidth and output power.

[5] In that action, we retained those Section 90.235 restrictions that were necessary to prevent harmful interference and preserve the essentially land mobile nature of Part 90 services. These restrictions included a limitation on output power and a prohibition against the use of fixed transmitters to meet mobile loading requirements. *See* 47 C.F.R. § 90.637(c). *See also* Report and Order, PR Docket No. 86-78, 1 FCC Rcd 926 (1986).

[6] Currently, licensees operating in the 220-222 MHz band are authorized to employ fixed signaling transmissions ancillary to land mobile operations. *See* 47 C.F.R. § 90.733(a)(1).

[7] *See* 6 FCC Rcd 6898 (1991).

[8] *See* Report and Order, 7 FCC Rcd at 4574-4575. *See e.g.*, API Comments at 6, and EGEMC Comments at 9.

Street, N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, telephone (202) 857-3800.

V. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that the Petition for Clarification and/or Reconsideration filed by the Utilities Telecommunications Council is GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to the authority of Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), Part 90 of the Commission's Rules, 47 C.F.R. Part 90, IS AMENDED as set forth in the Appendix below, effective [thirty days after publication in the Federal Register].

10. For further information regarding this Memorandum Opinion and Order contact Freda Lippert Thyden, Private Radio Bureau, Rules Branch, (202) 634-2443.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 90 - Private land mobile radio services

1. The authority citation for Part 90 continues to read:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.235 is amended by revising paragraph (1) to read as follows:

§ 90.235 Secondary fixed signaling operations.

* * * * * *

(1) Secondary fixed signaling operations conducted in accordance with the provisions of Sections 90.317(a), 90.637(c), or 90.731 are exempt from the foregoing provisions of this Section.

3. Section 90.731 is revised to read as follows:

§ 90.731 Restrictions on operational-fixed stations.

Except for control stations, operational-fixed stations will not be authorized in the 220-222 MHz band. Licensees may utilize their authorized frequencies for fixed ancillary signaling and data transmissions, subject to the following requirements:

(a) All such ancillary operations must be on a secondary, non-interference basis to the primary mobile operation of any other licensee.

(b) The output power at the remote site shall not exceed 30 watts.

(c) Any fixed transmitters will not be considered in whole or in part as a justification for authorizing additional frequencies in the licensee's mobile system.

(d) Automatic means must be provided to deactivate the remote transmitter in the event the carrier remains on for a period in excess of three minutes.

(e) Operational fixed stations authorized pursuant to the provisions of this paragraph are exempt from the requirements of Section 90.735.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TELEDIAL AMERICA, INC.,
Complainant,

v.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, and — File No. E-90-264
SOUTH CENTRAL BELL TELEPHONE COMPANY, — File No. E-90-265
Defendants.

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau

ORDER

Adopted: May 14, 1993; Released: May 21, 1993

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On May 18, 1990, Teledial America, Inc. (Teledial) filed the above-captioned formal complaints against defendants seeking damages resulting from defendants' alleged violations of the Commission's rate of return prescriptions for the period January 1, 1987 through December 31, 1988. On April 27, 1993, however, Teledial and defendants filed a joint motion to dismiss the complaints with prejudice stating that the parties have agreed to a settlement which disposes of all issues raised in the above-captioned complaints.[1]

2. We are satisfied that dismissal of the complaints will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated by Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that Teledial's and defendants' Joint Motion to Dismiss IS GRANTED.

4. IT IS FURTHER ORDERED that the Petition for Reconsideration filed on April 14, 1993 by defendants IS DISMISSED AS MOOT insofar as it relates to the above-captioned complaints.

5. IT IS FURTHER ORDERED that the above-captioned complaint proceedings ARE DISMISSED WITH PREJUDICE and ARE TERMINATED.

[1] On March 15, 1993, the Commission released a Memorandum Opinion and Order resolving the above-captioned complaints and directing the defendants to pay monetary damages. Memorandum Opinion and Order, FCC 93-75, 8 FCC Rcd 1876 (1993) (*MO&O*). On April 14, 1993, defendants filed a petition for reconsideration of the *MO&O*. Teledial and defendants, however, have since settled all issues between them raised in the complaints, including the issue of damages. The parties now move that we dismiss with prejudice the complaints and the pending petition for reconsideration of the *MO&O* relating to the complaints. Accordingly, since the parties have settled disputes between them raised by the complaints and petition for reconsideration, we will dismiss these proceedings with prejudice.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

LONG DISTANCE SAVERS, INC.,
Complainant,

v. File No. E-91-117

SOUTH CENTRAL BELL
TELEPHONE COMPANY,
Defendant.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau

ORDER

Adopted: May 14, 1993; Released: May 21, 1993

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On September 23, 1991, Long Distance Savers, Inc. (LDS) filed the above-captioned formal complaint against South Central Bell Telephone Company (South Central Bell) seeking damages resulting from South Central Bell's alleged violations of the Commission's rate of return prescription for the period January 1, 1987 through December 31, 1988. On April 27, 1993, however, LDS and South Central Bell filed a joint motion to dismiss the complaint with prejudice stating that the parties have agreed to a settlement which disposes of all issues raised in the above-captioned complaint.[1]

2. We are satisfied that dismissal of the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated by Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that LDS' and South Central Bell's Joint Motion to Dismiss IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint proceeding IS DISMISSED WITH PREJUDICE and IS TERMINATED.

[1] On March 15, 1993, the Commission released an order resolving the above-captioned complaint and directing the defendant to pay monetary damages. Memorandum Opinion and Order, FCC 93-75, 8 FCC Rcd 1876 (1993) (*"MO&O"*). On April 14, 1993, South Central Bell filed a petition for reconsideration of the *MO&O*. LDS and South Central Bell, however, have since settled all issues between them raised in the complaint, including the issue of damages. The parties now move that we dismiss with prejudice the complaint. Accordingly, since the parties have settled disputes between them raised by the complaint, we will dismiss the proceeding with prejudice.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AUTOMATED COMMUNICATIONS, INC.,
Complainant,

v. File No. E-91-173

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY,
Defendant.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau

ORDER

Adopted: May 14, 1993; Released: May 21, 1993

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On September 28, 1991, Automated Communications, Inc. (Automated) filed the above-captioned formal complaint against Southern Bell Telephone and Telegraph Company (Southern Bell) seeking damages resulting from Southern Bell's alleged violations of the Commission's rate of return prescription for the period January 1, 1987 through December 31, 1988. On April 27, 1993, however, Automated and Southern Bell filed a joint motion to dismiss the complaint with prejudice stating that the parties have agreed to a settlement which disposes of all issues raised in the above-captioned complaint.[1]

2. We are satisfied that dismissal of the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated by Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that Automated's and Southern Bell's Joint Motion to Dismiss IS GRANTED.

4. IT IS FURTHER ORDERED that the Petition for Reconsideration filed on April 14, 1993 by Southern Bell IS DISMISSED AS MOOT insofar as it relates to the above-captioned complaint.

5. IT IS FURTHER ORDERED that the above-captioned complaint proceeding IS DISMISSED WITH PREJUDICE and IS TERMINATED.

[1] On March 15, 1993, the Commission released an order resolving the above-captioned complaint and directing the defendant to pay monetary damages. Memorandum Opinion and Order, FCC 93-75, 8 FCC Rcd 1876 (1993) (*MO&O*). On April 14, 1993, Southern Bell filed a petition for reconsideration of the *MO&O*. Automated and Southern Bell, however, have since settled all issues between them raised in the complaint, including the issue of damages. The parties now move that we dismiss with prejudice the complaint and the pending petition for reconsideration of the *MO&O* relating to the complaint. Accordingly, since the parties have settled disputes between them raised by the complaint and the petition for reconsideration, we will dismiss the proceeding with prejudice.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN NETWORK EXCHANGE, INC.,
COMMUNICATIONS SERVICES, INC.,
COMMUNIGROUP OF K.C., INC.,
LONG DISTANCE SERVICE, INC.,
METROMEDIA LONG DISTANCE, INC.,
NATIONAL TELESERVICES, INC.,
RCI NETWORK SERVICES, INC.,
SCHNEIDER COMMUNICATIONS, INC.,
TELAMARKETING CORP. OF LOUISIANA,
TOTEL-TEL USA, and
WESTEL, INC.,
Complainants,

v.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, and — File No. E-91-146
SOUTH CENTRAL BELL TELEPHONE COMPANY, — File No. E-91-147
Defendants.

ORDER

Adopted: May 14, 1993; Released: May 21, 1993

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On September 27, 1991, Long Distance Service, Inc. (LDSI) and Total-Tel USA (Total-Tel) along with other complainants, filed the above-captioned formal complaints against Southern Bell Telephone and Telegraph Company and South Central Bell Telephone Company (BellSouth) seeking damages resulting from BellSouth's alleged violations of the Commission's rate of return prescription for the period January 1, 1987 through December 31, 1988. On April 30, 1993, however, LDSI and Total-Tel filed a motion for partial dismissal of their complaints. LDSI and Total-Tel state that a settlement has been reached between the parties.

2. We are satisfied that partial dismissal of the complaints with respect to claims by LDSI and Total-Tel will serve the public interest by eliminating or reducing the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.[1]

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated under Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that LDSI's and Total-Tel's Motion for Partial Dismissal IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint proceedings ARE DISMISSED and ARE TERMINATED to the extent they relate to the claims of LDSI and Total-Tel.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau

[1] On March 15 1993, the Commission released an order resolving the above-captioned complaints and directing the defendants to pay monetary damages. Memorandum Opinion and Order, FCC 93-75, 8 FCC Rcd 1876 (1993) (*MO&O*). LDSI, Total-Tel and BellSouth, however, have since settled all issues between them raised in the complaints, including the issue of damages. LDSI and Total-Tel now move that we dismiss them from the proceeding. Accordingly, since the parties have settled disputes between them raised by the complaint, we will dismiss the claims of LDSI and Total-Tel.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-57

In the Matter of

South Dakota Public Safety Plan

ORDER

Adopted: May 14, 1993; Released: May 21, 1993

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 5, 1993, Region 38 (South Dakota) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in South Dakota.

2. The South Dakota Plan was placed on Public Notice for comments due on April 21, 1993, 58 FR 14571 (March 18, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for South Dakota and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87-112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in South Dakota.

4. Therefore, we accept the South Dakota Public Safety Radio Plan. Furthermore, licensing of the 821-824/866-869 MHz band in South Dakota may commence immediately.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-58

In the Matter of

Tennessee Public Safety Plan

ORDER

Adopted: May 14, 1993; Released: May 21, 1993

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 21, 1993, Region 39 (Tennessee) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Tennessee.

2. The Tennessee Plan was placed on Public Notice for comments due on April 21, 1993, 58 FR 14571 (March 18, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Tennessee and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87-112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Tennessee.

4. Therefore, we accept the Tennessee Public Safety Radio Plan. Furthermore, licensing of the 821-824/866-869 MHz band in Tennessee may commence immediately.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 92-209

In the Matter of

Amendment of Part 90 of the Commission's Rules to Expand Coordination of the 800 MHz General Category Channels. RM-7965

REPORT AND ORDER

Adopted: May 11, 1993; Released: May 24, 1993

By the Commission:

I. INTRODUCTION

1. This *Report and Order* amends Part 90 of our Rules to provide Specialized Mobile Radio (SMR)[1] applicants for conventional systems[2] on General Category frequencies[3] the option of seeking frequency coordination from any of the three frequency coordinators certified to recommend 800 MHz frequencies. These coordinators are the Industrial Telecommunications Association, Inc. (ITA),[4] the National Association of Business and Educational Radio, Inc. (NABER), and the Associated Public-Safety Communications Officers (APCO).[5]

II. BACKGROUND

2. *Current Rule.* SMR applicants for conventional systems in the General Category must obtain coordination from NABER.[6] SMR applicants requesting General Category channels for expansion or consolidation of trunked operations may, in contrast, seek frequency coordination from any of the three certified frequency coordinators.[7]

3. *Notice of Proposed Rule Making.* On September 9, 1992 we adopted a *Notice of Proposed Rule Making* (*Notice*)[8] that proposed to make consistent coordination procedures between conventional and trunked SMR systems licensed on General Category channels. We tentatively concluded that no apparent justification existed for different coordination procedures, and no apparent benefit accrued from this disparate treatment of SMR applicants based on the operational mode the system used or proposed.[9] The *Notice* indicated our concern that SMR applicants requesting General Category channels for conventional operations may be at a competitive disadvantage to applicants seeking these same channels for expansion or consolidation of trunked SMR systems because the SMR applicant for a conventional system does not have the ability to choose the coordination service that best meets its requirements.[10] As NABER, APCO and ITA all currently maintain complete up-to-date data bases for General Category channels, we noted a lack of apparent benefit resulting from this differential treatment of SMR applicants.[11] Six comments and three reply comments were filed in response to the *Notice*.[12]

III. DISCUSSION

4. *Comments.* With the exception of APCO, which took no position,[13] commenters generally support the proposal to provide SMR applicants for conventional systems licensed on General Category frequencies the option of seeking frequency coordination from any of the three recognized coordinators.[14] They submit that members of the public should enjoy maximum flexibility in the

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[1] SMR licensees offer communications services on a commercial basis to private radio eligibles. *See* Second Report and Order in Docket No. 18262, 46 FCC 2d 752 (1974)(subsequent history omitted).

[2] Conventional systems are authorized in all private land mobile frequency bands. However, trunked systems are currently authorized only at 220 MHz and on frequencies above 800 MHz. Whereas a conventional system user manually selects the channel on which to transmit, a trunked system user is automatically routed by a computer to the first available channel. *See* Report and Order in PR Docket No. 87-213, 5 FCC Rcd 4016, 4017 (1990).

[3] Prior to 1990, these 150 conventional 800 MHz frequencies were set aside exclusively for conventional use. However, in 1990, these channels were made available to all eligible users for either conventional or trunked use as "General Category" channels. *Id.* at 4018.

[4] ITA was formerly known as the Special Industrial Radio Service Association, Inc. (SIRSA).

[5] In 1983, we recognized NABER as the sole coordinator for SMR systems on these 150 conventional channels. *See* Public Notice, Designation of Frequency Coordinator for 150 Original 800 MHz Conventional Channels, Mimeo No. 3950, May 3, 1983. Three years later, in 1986, while establishing new frequency coordination procedures, we certified ITA, NABER, and APCO as the frequency coordinators for the 150 conventional 800 MHz frequencies. Applicants seeking the 150 conventional 800 MHz channels for non-SMR systems must obtain coordination from the frequency coordinator representing the category in which they establish eligibility. *See* Report and Order in PR Docket No. 83-737, 103 FCC 2d 1093, 1146-1147 (1986).

[6] This procedure was summarily indicated in the proceeding permitting the 150 channels to be used for trunking operations. *See* Report and Order in PR Docket No. 87-213, 5 FCC Rcd at 4023 and note 75.

[7] *Id.* at 4023.

[8] Notice of Proposed Rule Making, PR Docket No. 92-209, 7 FCC Rcd 6470 (1992).

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] The *Notice* established November 27, 1992, and December 14, 1992, as the filing dates for comments and replies, respectively. *See* Appendix B for a list of parties filing comments and replies.

[13] *See* APCO Comments at 2.

[14] *See* ITA Comments at 5, Council of Independent Communication Suppliers (CICS) Comments at 4, American Mobile Telecommunications Association, Inc. (AMTA) Comments at 2, and Radio Communication Associates Comments (RCAC) at 1. *See also* Fleet Call, Inc. (Fleet Call) Reply Comments at 3.

selection of desired services.[15] Commenters contend that if all three certified 800 MHz coordinators are permitted to coordinate applications for conventional SMR stations, there will be greater incentive for the individual coordinators to ensure that applicants receive a superior product.[16]

5. Commenting parties further assert that marketplace considerations aside, there are practical reasons warranting the provision of options in seeking coordination services. For instance, there may be some disparity among the three coordinators in the time required for coordinating applications.[17] This disparity can result from a number of factors, such as pending workload, availability of staff resources, and routine fluctuations relating to the flow of applications.[18] Commenters also note their desire to choose a particular coordinator because of a valued relationship already developed.[19]

6. AMTA also indicates concern that because General Category coordinations can involve several coordinators simultaneously recommending the same channel, an applicant remains unsure of whether a grant will result.[20] Several commenters concede that all we presently require is that coordinators be notified of a frequency recommendation.[21] AMTA and NABER, however, find notification inadequate.[22] Instead, these parties want us to require that all three coordinators concur in the frequency recommendation before the application is filed with the Commission.[23] ITA opposes the adoption of concurrence procedures as beyond the scope of this rule making proceeding.[24] It further argues that implementing a concurrence requirement would subject the coordination process to delays and would negate the natural incentives which stem from a competitive environment.[25]

7. *Discussion.* The record in this proceeding supports permitting SMR applicants for conventional systems using General Category frequencies the option of seeking frequency coordination from any of the three recognized frequency coordinators. Commenters generally are in agreement that our proposal would be beneficial because it would remove the competitive disadvantage currently imposed on SMR applicants for conventional facilities. After implementation of our proposal, all SMR applicants for systems, trunked and conventional, on General Category channels will have the advantage of being able to choose a frequency coordinator on the basis of criteria such as cost and speed of service.

8. Only NABER indicates any concerns regarding our proposal. In particular, NABER submits that adoption of our proposal would be, in effect, a rejection of the requirement that certified frequency coordinators be representative of the users they serve.[26] [27] We find no merit in this contention. Our proposal to provide SMR applicants for conventional systems on General Category frequencies the option of seeking frequency coordination from any of the three recognized coordinators is not a rejection of the representativeness standard for certification of coordinators. Upon selection of frequency coordinators for various radio services in 1986,[28] we specifically declined to certify a coordinator for the SMR category because, at that time, our policies with regard to this relatively new industry were still evolving,[29] and the Commission believed that no single entity was representative of all applicants for SMR licenses.[30] Therefore, because there is no entity representative of SMR applicants for coventional systems, NABER's argument that we are rejecting the "representativeness" standard for this radio category has no justification.

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[15] *See, e.g.*, CICS Comments at 2.

[16] *See, e.g.*, ITA Comments at 4.

[17] *See, e.g.*, AMTA Comments at 3, and ITA Comments at 5.

[18] *See, e.g.*, CICS Comments at 4.

[19] *See, e.g.*, CICS Comments at 4.

[20] *See* AMTA Comments at 5-6.

[21] *See, e.g.*, ITA Reply Comments at 7.

[22] *See* AMTA Comments at 8, and NABER Reply Comments at 3.

[23] *See* AMTA Comments at 8, and NABER Reply Comments at 2. AMTA asserts that the coordinators no longer obtain concurrence from each other for General Category frequency recommendations as they did for over a decade, but now simply notify one another of their recommendations some undetermined time after the action has taken place. *See* AMTA Comments at 6. AMTA further submits that if the Commission does not wish to mandate concurrence procedures, applicants should be permitted to request General Category frequencies based on an independent frequency analysis directly from the Commission rather than requiring coordination through the recognized organizations. *See* AMTA Comments at 8. However, ITA opposes permitting applicants to perform their own data base search and to file applications directly with the Commission because it would introduce greater uncertainty, as well as a large degree of chaos, into the coordination process. *See* ITA Reply Comments at 7-8.

[24] *See* ITA Reply Comments at 6.

[25] *See* ITA Reply Comments at 7.

[26] *See* NABER Reply Comments at 5. *See also* Communications Technical Amendments Act of 1982, Report No. 97-765, 97th Congress 2d Sess., Sec. 20, p. 47, where Congress directed the Commission to recognize only representative frequency advisory committees before permitting non-representative committees to issue frequency coordinations.

[27] NABER would support our proposal if it were to permit *any* applicant (*i.e.*, Business, Industrial/Land Transportation, Public Safety and SMRS) for General Category channels to have the option of obtaining coordination from any of the three certified frequency coordinators (APCO, NABER, or ITA). *See* NABER Comments at 3-4. NABER submits that the Commission cannot logically extend its argument to expand coordination options for SMR applicants for conventional systems without a similar extension to *all* applicants for General Category channels regardless of service eligibility. *See* NABER Comments at 5. We agree with Fleet Call and ITA that NABER's proposal is outside the scope of this proceeding because the matter was not raised for comment in the *Notice*. *See* Fleet Call Reply Comments at 4, and ITA Reply Comments at 3. *See also* 5 U.S.C. § 553(b)(3) in which the Administrative Procedure Act requires that general notice of proposed rule making include either the terms or substance of the proposed rule or a description of the subjects and issues involved. The matter of providing expanded coordination options to all applicants for General Category channels may be pursued through a Petition for Rule Making by any interested party.

[28] *See* note 5, *supra*.

[29] *See* Report and Order in PR Docket No. 83-737, 103 FCC 2d at 1144.

[30] Given the diverse nature of SMR licensees and end users, we remain convinced that no single frequency coordinator can be deemed the exclusive representative of the SMR category.

9. In 1990, in making the 150 channels available for the first time to eligibles for trunked use as "General Category" channels, we permitted applicants seeking to use conventional General Category frequencies for expansion or consolidation of trunked SMR systems to choose any of the three recognized coordinators for coordination services.[31] At that time, without any discussion, we indicated that SMR applicants for conventional systems in the General Category should continue to obtain coordination from NABER, as they had been doing since 1983.[32] This disparity in treatment of SMR applicants for trunked and conventional use of these General Category channels is unjustified and warrants remediation. Therefore, we will permit all applicants for SMR systems on these frequencies the option of seeking frequency coordination from any of the three recognized coordinators.

10. In regard to AMTA's proposal that we require the three coordinators to adopt concurrence procedures,[33] we conclude that our current requirement that coordinators on a timely basis notify each other upon recommending a General Category channel is satisfactory.[34] This notification procedure provides coordinators with the information that is necessary to enable them to fulfill their frequency recommendation obligations. As we stated in the *Notice*, in instances where we permit multiple coordinators to provide frequency recommendations for the same frequencies, we intend to continue our current practice of giving priority to the application first filed with the Private Radio Bureau's Licensing Division.[35] We do not, however, believe the public interest would be served through our micro-management of the coordination process. Coordinators are, of course, free to implement any notification procedures they deem necessary to achieve effective, efficient frequency recommendations.[36]

IV. FINAL REGULATORY FLEXIBILITY ANALYSIS

11. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

Need and Purpose of the Action

12. By permitting applicants for conventional SMR systems in the General Category to choose from any of the three certified coordinators for this group of channels, the Commission will conform our regulatory treatment of conventional SMR applicants seeking a recommendation for an 800 MHz General Category frequency to that currently afforded trunked applicants also seeking a recommendation of General Category frequencies.

Issues Raised in Response to the Initial Regulatory Flexibility Analysis

13. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

Significant Alternatives Considered and Rejected

14. All significant alternatives have been addressed in this Report and Order.

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r) and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 332(a), Part 90 of the Commission's Rules, 47 C.F.R. Part 90, IS AMENDED as set forth in the Appendix below, effective [thirty days after publication in the Federal Register].

16. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

17. For further information concerning this *Report and Order*, contact Freda Lippert Thyden, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632-7125.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amend as follows:

Part 90 - Private land mobile radio services

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, and 332, unless otherwise noted.

2. Section 90.615 is amended by adding a new last sentence to paragraph (a) to read as follows:

§ 90.615 Frequencies available in the General Category.

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[31] *See* Report and Order in PR Docket No. 87-213, 5 FCC Rcd at 4023.

[32] *See* note 5, *supra*.

[33] NABER supports AMTA's proposal to require specific concurrence procedures. *See* NABER Reply Comments at 5. Such procedures have never been required of coordinators. *See* Report and Order in PR Docket No. 83-737, 103 FCC 2d at 1111-1112 (1986).

[34] At the time we permitted trunking on the General Category channels, we indicated that procedures were already in place for notification among the three 800 MHz coordinators when a frequency recommendation is made by one of them. *See* Report and Order in PR Docket No. 87-213, 5 FCC Rcd at 4022.

[35] *See Notice* at 6470 and n.8. *See also* 47 C.F.R. § 0.481.

[36] Moreover, as we did not propose in the *Notice* to modify the notification procedure, this matter is beyond the scope of this rule making proceeding.

(a) * * * Applications submitted by eligibles under § 90.603(c) must be coordinated (see § 90.175) by any one of the frequency coordinators certified to coordinate applications above 800 MHz.

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APPENDIX B

List of Parties Filing Comments

American Mobile Telecommunications Association, Inc.

Associated Public-Safety Communications Officers, Inc.

Council of Independent Communication Suppliers

Industrial Telecommunications Association, Inc.

National Association of Business and Educational Radio, Inc.

Radio Communication Associates

List of Parties Filing Reply Comments

Fleet Call, Inc.

Industrial Telecommunications Association, Inc.

National Association of Business and Educational Radio, Inc.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: May 24, 1993

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON MCI'S APPLICATION FOR REVIEW OF THE BELL OPERATING COMPANIES' 1992 OPEN NETWORK ARCHITECTURE PLAN AMENDMENTS & REPORTS

CC DOCKET 88-2
PHASE I

On April 29, 1993, MCI Telecommunications Corporation (MCI) filed an Application for Review of the Common Carrier Bureau's Memorandum Opinion and Order approving the Bell Operating Companies' (BOCs) 1992 Open Network Architecture (ONA) plan amendments and reports, *BOC ONA Second Further Amendment Order*, CC Docket 88-2, Phase I, DA 93-362, released March 29, 1993.

MCI argues that the Bureau's Order is inconsistent with the Commission's original ONA policy established in the *Computer III* proceeding. MCI states that the BOCs were required to address both the unbundling of new technologies and how the services provided through these technologies would be unbundled. MCI argues that the BOCs' responses were inadequate and that the Bureau, by approving these amendments, has acceded to the BOCs' resistance to any ONA evolution. MCI also states that the BOCs' 1992 ONA reports revealed the BOCs' continuing unresponsiveness to ESPs' requests for ONA services. MCI argues that the Bureau's Order endorses the BOCs' failure to respond to ESPs' requests, and violates the *Computer III* promise of a comprehensive set of unbundled basic network features that address a wide variety of enhanced services. Finally, MCI argues that the Order applies and extends a weakened version of ONA implemented in prior ONA decisions that are on appeal in *California v. FCC*, No. 90-70336 and consolidated cases (9th Cir. filed July 5, 1990).

Interested parties are to file comments on this application for review by **June 7, 1993,** and reply comments by **June 17, 1993,** with the Secretary, FCC 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the application can be obtained from ITS, Inc. at (202) 857-3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally*, 47 C.F.R. §§1.1200-1.1216. For further information contact Peggy Reitzel, Policy and Program Planning Division of the Commission Carrier Bureau, at (202) 632-1300.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Applications of

NEWCOMB COMMUNICATIONS, INC. File No. 2161-DSE-P/L-92
Call Sign E920586

For Blanket Authority to
Construct and Operate Transmit-Only
Mobile Domestic Earth Stations
in the 1610-1626.5 MHz
Frequency Band

ORDER AND AUTHORIZATION

Adopted: May 12, 1993; Released: May 24, 1993

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. Newcomb Communications, Inc. (Newcomb) has applied for authority to construct and operate 100,000 transmit-only mobile earth stations to provide radiolocation and ancillary data information in the continental United States, Alaska, and adjoining waters and airspace. The "user units" would access the receive-only radiodetermination satellite service (RDSS) packages on-board GTE Spacenet Corporation's (GTE Spacenet's) Spacenet-3 and GSTAR-3 domestic fixed-satellites. The units are to uplink to the satellites in the 1610-1626.5 MHz frequency band. Motorola Satellite Communications, Inc. (Motorola) and Ellipsat Corporation (Ellipsat) filed petitions to deny; Constellation Communications, Inc. (Constellation) and TRW, Inc. (TRW) filed comments. For the reasons discussed below, Newcomb's application is granted in part and denied in part.

II. BACKGROUND

2. In 1986, GTE Spacenet was authorized to incorporate receive-only RDSS packages on its Spacenet-3 and GSTAR-3 satellites for its customer, Geostar Positioning Corporation (Geostar).[1] These packages were intended to allow Geostar to provide interim one-way position location service to its customers until its dedicated three-satellite RDSS system was implemented.[2] The interim system was to operate in the following manner: A Geostar mobile user unit equipped with a LORAN-C or other position-location device would transmit to the GTE Spacenet satellites in the 1610-1626.5 MHz Earth-to-space RDSS band. The satellite would convert the transmissions to an 11.7-12.2 GHz (Ku-band) fixed-satellite signal and downlink the transmissions to Geostar's central fixed-earth station via the Ku-band. The position information would then be relayed to customers' operations centers using conventional terrestrial or satellite communications facilities.[3] Geostar declared bankruptcy in February 1991; its dedicated system was never built and operations on its interim system were suspended.

3. In late 1990, the Commission received two applications to implement low-Earth orbit satellite systems providing both RDSS and a variety of voice mobile satellite services (MSS) in the 1610-1626.5 MHz/2483.5-2500 MHz RDSS bands. In April 1991, these applications were placed on public notice and a June 3, 1991 cut-off date was established for filing additional applications to provide RDSS service in these bands.[4] Four additional applications were filed by the cut-off date for consideration in the June 1991 processing group. Newcomb did not file an application at that time. In the past two years, efforts to establish an expanded RDSS/MSS service have been proceeding. An international allocation for a co-primary MSS in the RDSS bands was made in 1992,[5] the Commission has instituted a rulemaking to reallocate the frequencies in a similar manner domestically,[6] and the Commission has instituted a negotiated rulemaking proceeding (MSS Above 1 GHz Proceeding) to establish technical and licensing rules for the new service.[7]

4. In its application, which was filed in July 1992, Newcomb essentially requests authority to resurrect Geostar's one-way interim service. It seeks to provide land, aeronautical, and maritime position location information to users throughout the continental United States and Alaska via mobile user units equipped with global positioning system (GPS) receivers or other external navigation aids (*e.g.*, aircraft internal navigation system). Newcomb asserts that its proposed system complies with all technical criteria established for the Geostar mobile units and will serve the needs of former Geostar customers. Newcomb also asserts that it has been operating its system pursuant to a grant of special temporary authority since early-1992[8] and that no interference incidents have been reported. Newcomb states that once the license terms of the GTE Spacenet satellites expire, it will transition its service to other facilities that may be licensed in the RDSS bands.

5. Four applicants in the MSS Above 1 GHz Proceeding have filed pleadings with respect to Newcomb's application. They argue that Newcomb missed the cut-off date for

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[1] *GTE Spacenet Corporation*, 1 FCC Rcd 1163 (Com. Car. Bur. 1986) (Spacenet package); *GTE Spacenet Corporation*, Mimeo No. 5175 (Com. Car. Bur. 1986)(GSTAR package).

[2] *See Geostar Corporation*, Mimeo No. 6144 (Com. Car. Bur. 1986). The dedicated satellites were to operate in the 1610-1626.5 MHz/2483.5-2500 MHz bands allocated to RDSS.

[3] Geostar was later granted authority to provide interim two-way service through a satellite-to-mobile unit transmission link in the 3700-4200 MHz band (C-band). This "outbound" transmission link is not included in Newcomb's proposal.

[4] *Public Notice*, 6 FCC Rcd 2083 (1991).

[5] *Final Acts of the World Administrative Radio Conference* (WARC-92), Malaga-Torremolinos, 1992.

[6] *Notice of Proposed Rulemaking*, ET Docket No. 92-38, 7 FCC Rcd 6414 (1992).

[7] *Public Notice*, 57 Fed. Reg. 60781 (Dec. 22, 1992) (CC Docket No. 92-166).

[8] *See* letter from Chief, Domestic Facilities Division to Paul F. Newcomb (March 6, 1992).

applications for systems in these bands, that it has not demonstrated that its system is compatible with existing and proposed systems in these bands, and that it has not demonstrated the viability of its RDSS proposal. They urge that Newcomb's application be denied or, at a minimum, that the Commission defer action on it until the MSS Above 1 GHz Proceeding is completed and Newcomb demonstrates that it can conform to all domestic and international requirements.

III. DISCUSSION

6. Allowing the temporary use of existing orbital resources may permit the public to receive services that would not otherwise be available. Consequently, various grants of temporary authority have been issued in the satellite arena over the past two decades. In issuing such authority, however, the Commission has been mindful to ensure that temporary operations do not adversely impact regularly licensed satellite systems and it has conditioned temporary grants accordingly.[9]

7. Here, Newcomb seeks to use existing in-orbit RDSS packages to reinstitute an interim position location service previously provided by another licensee. Newcomb has been testing its system -- which is essentially identical to the one-way Geostar system -- for more than a year under special temporary authority. No interference incidents have been reported. Contrary to the assertions of Motorola and based on the record of Geostar's interim operations, we do not foresee any significant interference potential between Newcomb's operations and the operations of others now using the 1610-1626.5 MHz band.[10] Significantly, no existing users have commented on Newcomb's application. Nevertheless, should Newcomb's operations interfere with those of any other allocated service in the band, Newcomb, as an interim service provider, will be required to terminate operations immediately.[11] Further, pursuant to Article 8 of the INMARSAT Convention, Newcomb is required to consult its proposed maritime operations with INMARSAT before it may begin providing maritime communications service.[12] Under these circumstances, denying or deferring action on Newcomb's application, as some commenters suggest, will only serve to waste in-orbit capacity and deprive the public of service.

8. However, an open-ended grant to Newcomb to provide interim service until the GTE Spacenet satellites are retired is likely to impact the provision of dedicated MSS/RDSS by the entity or entities licensed in the June 1991 processing group and which are being considered in the MSS Above 1 GHz Proceeding. The Newcomb mobile terminals appear to have a potential interference power level that is two to 100 times stronger than the systems proposed by the MSS applicants.[13] To avoid this interference, the proposed MSS systems would be required to reduce their system capacity.

9. We will not permit Newcomb's operations to affect the processing or licensing of those applications being considered in the MSS Above 1 GHz Proceeding. In this regard, we agree with the commenters that Newcomb missed the June 1991 cut-off date and, consequently, is not entitled to consideration in this processing group. While Newcomb asserts that the cut-off date did not apply to it because it sought only to use space segment capacity previously licensed for RDSS use, the cut-off notice did not specify any such limitation. The notice stated that:

> ... interested parties wishing to file applications for satellite systems to provide RDSS service in the 1610-1625.5 MHz and 2483.5-2500 MHz bands to be considered concurrently with Motorola's and Ellipsat's must do so on or before June 3, 1991.[14]

10. Contrary to Newcomb's assertion, GTE Spacenet's authorization to incorporate receive-only RDSS packages on two of its satellites did not "license" the satellites for RDSS use by all existing and future GTE Spacenet customers, rendering the cut-off inapplicable. Rather, the license to provide RDSS service was granted to Geostar, whose transmitting units accessed the GTE Spacenet satellites, on the basis of the particular circumstances in

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[9] *See, e.g., American Mobile Satellite Corp.*, 7 FCC Rcd 942 (1992) (authority to provide interim land mobile satellite service in the lower L-band frequencies granted with condition that interim service providers transition to dedicated upper L-band system when it is brought into service); *ARC Professional Services Group*, 5 FCC Rcd 5398 (Com. Car. Bur. 1990) (ARC granted temporary authority to operate tracking and data relay satellite (TDRS) system C-band transponders on a commercial basis until that orbital location was ready to be occupied by a regularly assigned licensee); *Satellite Business Systems*, Mimeo No. 5207 (Com. Car. Bur. 1984) (SBS granted temporary authority to operate its SBS-4 satellite at 101^0 W.L. to enable a customer to provide interim direct broadcast satellite service until 101^0 W.L. was ready to be occupied by a regularly assigned fixed-satellite licensee.)

[10] The radio astronomy service is operating in the 1610.6-1613.8 MHz band. There are sixteen radio astronomy sites throughout the U.S. The Russian Global Navigation System (GLONASS) is now being implemented and is expected to be fully deployed by 1995, when it will operate on 24 discrete frequencies between 1602 MHz and 1616.0 MHz with 24 satellites. Although experiments have been conducted in the U.S., we have no information indicating that GLONASS will be used on a regular basis in the U.S. in the near term. We note, however, that should GLONASS be authorized to operate within the U.S., Newcomb will be required to curtail its operations, which do not comply with the international power limitations contained in RR 731E.

[11] While we will not require Newcomb to obtain coordination agreements with other domestic users before beginning operations, it would appear to be in Newcomb's best interests to do so. For example, Newcomb's terminals will be required to observe the large protection areas around radio astronomy sites. A coordination agreement, similar to the one reached by Geostar and the National Science Foundation, should help facilitate Newcomb's operations -- especially its airborne operations -- in this regard.

[12] Subpart (1) of Article 8 states that "[a] party shall notify the Organization in the event that it or any person within its jurisdiction intends to make provision for, or initiate the use of, individually or jointly, separate space segment facilities to meet any or all of the maritime purposes of the INMARSAT space segment, to ensure technical compatibility and to avoid significant economic harm to the INMARSAT system."

[13] We estimate that the interference potential of Newcomb's system is about 50 to 100 times greater than the interference potential of the proposed code division multiple access (CDMA) MSS systems and about 2 to 5 times greater than the interference potential of the proposed frequency division multiple access (FDMA) MSS system.

[14] *See* note 4, *supra*.

that case.[15] Any other entity wishing to provide similar services via the GTE Spacenet satellites would be required to file a separate application to provide RDSS service, and that application would be considered on its merits. We conclude that Newcomb is therefore an applicant to provide RDSS service within the meaning of the cut-off notice.[16] Any other interpretation would defeat the purpose of the cut-off, which is to ensure "orderliness, expedition and finality" in the licensing process.[17] Having missed the June 1991 cut-off, Newcomb is not entitled to concurrent consideration with applications in the MSS Above 1 GHz Proceeding. Moreover, we will not permit an extended grant to Newcomb to prejudice the rights of those applicants in the June 1991 processing group by affecting in any way the technical and licensing rules adopted in that proceeding or the operating parameters of any MSS system.[18]

11. Even if the cut-off did not apply to Newcomb, however, this would not change the result. The Commission has repeatedly emphasized that use of the 1610-1626.5 MHz band via domestic fixed-satellite packages was to be on an interim basis only and was not to interfere with the introduction of dedicated MSS/RDSS space station facilities in that band. Thus, in allowing Geostar to continue to operate its interim system despite the possibility that it would not build its dedicated system, the Commission warned that:

> ... should operation of the interim system serve to block entry by other potential users of ... the RDSS ... spectrum or should other compelling circumstances arise, we may find it necessary to impose some operational or other conditions on Geostar's continued use of these frequencies.[19]

12. Newcomb's proposed system will create an increased potential for interference in a dedicated MSS/RDSS system environment.[20] The Spacenet-3 and GSTAR-3 licenses do not expire until September 1998 and March 1998, respectively. However, dedicated MSS/RDSS satellites are likely to be launched by that time. We flatly reject Newcomb's suggestion that we authorize it to operate its system until the GTE Spacenet satellites are retired, and to coordinate, on essentially an equal footing, its operations with those of any new systems. We will not permit an interim RDSS system using packages on two fixed-satellites to impact the provision of a new, wide-ranging service that will be provided via dedicated satellites.[21]

13. Thus, we grant Newcomb authority to operate its mobile units only until an entity regularly licensed to provide service in the 1610-1626.5 MHz band has launched its first satellite. Any request for authority to operate after this date will be entertained only if Newcomb can conclusively demonstrate that its operations will not interfere with dedicated MSS operations in the band or if all operating MSS system licensees have agreed to Newcomb's operations. Further, to facilitate any termination of service that may be required, we require Newcomb to maintain a record of the platforms on which each mobile unit is installed, specifying whether the terminals are used for land, maritime, or aeronautical service and specifying the name, address, and telephone number of the customer. We also require Newcomb to inform its customers that service is being provided pursuant to a grant of interim authority and that service will terminate upon the launch of a regularly licensed MSS/RDSS satellite.[22] Finally, because operations are on an interim basis only, we authorize Newcomb to construct and operate 10,000 units only, not the 100,000 it has requested.[23]

IV. CONCLUSION AND ORDERING CLAUSES

14. We find that the public interest, convenience and necessity will be served by allowing Newcomb to provide its proposed one-way position location service on a temporary basis. We recognize that dedicated MSS/RDSS satellites may be brought into service before the GTE Satellites are retired, and place Newcomb on notice that, in this event, it will be required to terminate operations even if GSTAR-3 and Spacenet-3 have not exhausted their operational capacity.

15. Accordingly, pursuant to Section 309 of the Communications Act, 47 U.S.C. § 309, and Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, IT IS ORDERED that Application File No. 2161-DSE-P/L-92 IS GRANTED IN PART and DENIED IN PART as set forth above and that Newcomb Communications, Inc. IS AUTHORIZED to construct 10,000 mobile transmit-only units and to operate the units in the 1610-1626.5 MHz

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[15] *See Geostar Corp.*, 2 FCC Rcd 1184 (Com. Car. Bur. 1987) (Geostar issued blanket authority for 10,000 transmitting user units).

[16] This is consistent with a prior Commission determination that an applicant seeking to access existing in-orbit capacity to provide commercial fixed-satellite services was required to pay the fees associated with applications to construct and launch new satellite space stations. *See* letter from Managing Director, FCC to Raul R. Rodriguez (Oct. 11, 1990).

[17] *See, e.g., Radio Athens, Inc. (WATH) v. FCC*, 401 F.2d 398, 400-402 (D.C. Cir. 1968); *Green Country Mobilephone, Inc.*, 98 FCC 2d 593, 600 (1984).

[18] Newcomb is, of course, free to refile its proposal upon termination of the MSS Above 1 GHz proceeding and that application would be considered in a new processing group. Newcomb would need to demonstrate, however, that its system is compatible with licensed systems in the band. *Cf.* 47 C.F.R. §§ 25.141(b); and 25.140(b)(3).

[19] *Geostar Positioning Corporation*, 6 FCC Rcd 2276 (Com. Car. Bur. 1991), at para. 28.

[20] *See* discussion at para. 8, *supra*.

[21] Given these findings, we do not need to reach the merits of the opponents' remaining arguments. The coordination and compatibility issues raised with respect to a new MSS/RDSS service are mooted by the terms of Newcomb's grant. We also do not need to consider whether Newcomb's proposed service is viable or whether Newcomb's service proposal constitutes a non-conforming use of the RDSS frequencies -- Newcomb's license is temporary only and in-orbit capacity is available, with no anticipated detriment to other existing users of the band.

[22] In this regard, authorizations awarded in the June 1991 processing group will be conditioned to require licensees to notify Newcomb upon receipt of any confirmed launch dates and upon launch of the first satellite in the system.

[23] Once Newcomb has implemented the 10,000 units, it may file an application to increase the authorized number. In considering any such request, we will take into account the status of any regularly licensed systems in the band.

band in the continental United States and Alaska and adjoining territorial waters via the GSTAR-3 and Spacenet-3 satellites as specified in its application and subject to the following conditions:

(a) This authorization will terminate on the date on which a regularly licensed MSS/RDSS provider in the 1610-1626.5 frequency band launches the first satellite in its system;

(b) no harmful interference shall be caused to any other allocated service in the band, and operation by Newcomb Communications, Inc. shall cease immediately upon notification of interference; and

(c) maritime operations may not commence until the Department of State informs the Commission that the U.S. has fulfilled its obligations under Article 8 of the INMARSAT Convention.

16. IT IS FURTHER ORDERED that Newcomb Communications, Inc. shall file with the Commission annually the number of terminal units constructed within that year, specifying whether the terminals are used for land, maritime or aeronautical service.

17. IT IS FURTHER ORDERED that Newcomb Communications, Inc. shall maintain a record of the platforms on which each terminal unit is installed, and shall specify the name, address, and telephone number of the customer.

18. IT IS FURTHER ORDERED that Newcomb Communications, Inc. is required to inform its customers that service is being provided pursuant to a grant of interim authority and will terminate pursuant to the conditions specified in paragraph 15(a), above.

19. IT IS FURTHER ORDERED that the Petitions to Deny filed by Motorola Satellite Communications, Inc. and Ellipsat Corporation ARE GRANTED to the extent set forth herein and ARE OTHERWISE DENIED.

20. Newcomb Communications, Inc. is afforded thirty days to decline the authorization as conditioned. Failure to respond within this period will constitute formal acceptance of the authorization as conditioned.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEGRAM CORPORATION — File No. I-T-C-93-052

ERRATUM

Released: May 24, 1993

By the Chief, International Facilities Division:

1. On April 27, 1993, an *Order and Authorization* in the above-captioned proceeding was released, DA 93-471. In paragraph 2 of the Order relating to the "international telegram service" (lines 3-4), the following tariff should be added:

MCI's Tariff F.C.C. No. 1.

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities
Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-84

In re Applications of

RADIO REPRESENTATIVES, INC. File No. BPH-870910MD

KASA MOKU KA PAWA BROADCASTING, INC. File No. BPH-870910MZ

For Construction Permit for
New FM Station, Channel 290C,
Honolulu, Hawaii

MEMORANDUM OPINION AND ORDER

Adopted: May 13, 1993; Released: May 25, 1993

By the Review Board: MARINO (Chairman) and GREENE. Board Member BLUMENTHAL absent. *

1. In a *Decision* in this proceeding, 7 FCC Rcd 6052 (Rev. Bd. 1992), the Review Board affirmed the *Initial Decision* (I.D.), 7 FCC Rcd 2224 (1992) of Administrative Law Judge Joseph P. Gonzalez (ALJ), which granted the application of Kasa Moku Ka Pawa Broadcasting, Inc. (KMKP). The losing applicant, Radio Representatives, Inc. (RRI), did not except to the ALJ's determination that KMKP was the clear comparative winner under both the diversification and integration criteria. The sole dispute before the Board centered on the ALJ's resolution of Issue (3), which reads as follows:

> [3]: To determine whether the proposals of [both captioned applicants] will provide the coverage required by Section 73.315(a) of the Commission's Rules, and if not, whether evidence exists which would warrant a waiver.

The ALJ concluded that both applicants were in substantial compliance with (or entitled to a waiver of) 47 CFR § 73.315(a). In its exceptions, RRI argued that KMKP was not in compliance and should be disqualified. We held, after agreeing in significant measure with the analysis of the Mass Media Bureau, that "there is simply a lack of persuasive evidence in this proceeding upon which to absolutely disqualify KMKP on technical grounds." *Decision*, at ¶ 11. We now have before us a petition for reconsideration, filed September 21, 1992, by RRI; an opposition, filed September 25, 1992, by the Bureau; and a reply, filed October 13, 1992, by RRI.

2. In our *Decision*, we rejected RRI's attack on KMKP's technical qualifications which RRI premised on arguments as to the type of engineering study which should be utilized to predict coverage and on what land area comprises the proper definition of Honolulu. Noting RRI's concession that, using standard prediction methodology, both applicants satisfy the requirements of 47 CFR § 73.315(a), we concluded that the record did not establish the necessary elements upon which to base KMKP's disqualification, namely that:

> (1) the "standard prediction method" set forth in 47 CFR § 73.313 is not appropriately applied in this proceeding; (2) at least one of RRI's three "alternative" engineering studies is, conversely, *both* reliable and applicable here; (3) the *only* definition of the subject "community of license" is that postulated by RRI (*i.e.*, coterminous with the "Judicial District," *but excluding* certain off-shore islands), and not the "legal definition" of Honolulu; and (4) that, in any event, KMKP is not entitled to a waiver of 47 CFR § 73.315.

Decision, at ¶ 10. In its petition, RRI disputes the Board's conclusions under each of the relevant factors.

3. We will deny RRI's petition. It is well-settled that reconsideration will not be granted for the purpose of again debating matters on which the tribunal has already deliberated and spoken. *WWIZ, Inc.*, 37 FCC 685 (1965), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966). Here, RRI's petition essentially reiterates arguments that we previously considered and rejected, and does not rely on new facts, changed circumstances, or material errors or omissions in our *Decision*. *See Isis Broadcast Group*, 8 FCC Rcd 24 (Rev Bd. 1993). As the Bureau correctly notes, RRI does not point to specific errors in our opinion, but simply disagrees with the reasoning summarized above in para. 2. Thus, for example, RRI continues to maintain that its alternative engineering studies were more reliable that the "standard prediction" method specified in 47 CFR § 73.313. Petition, at p. 10, although this argument was expressly rejected as unpersuasive in our *Decision*, at ¶ 11. Likewise, with respect to RRI's repetition that its definition of Honolulu is the only proper definition of the proposed city of license, Petition, at p. 13, we held that the Commission had never found this definition to be either applicable or exclusive in determining the city's coverage. *Decision*, at ¶ 11. Nor, in addition, did we find any public interest reason to adopt RRI's "crabbed definition of Honolulu, with service to be provided to fewer than half the number of persons residing within the 'legal definition' of the 'principal city.'" *Id.* Finally, as to RRI's contention that the Board must deny KMKP's request for waiver of 47 CFR §73.315(a), Petition, at p. 19, we specifically agreed with the Bureau's assessment that:

> Even if it could be concluded on the basis of this record that city-grade coverage will not be achieved by either or both applicants, a waiver would be appropriate. The record is clear that the Honolulu area contains irregular terrain. Further, there are limitations on site location imposed by the FCC Monitoring Station and the Federal Aviation Administration. RRI Ex. 7, at p. 2. Moreover, the signal shortfall here, if any, is very small and the result of terrain obstructions. *Compare Naguabo Broadcasting Company*, 6 FCC Rcd 912 (Rev. Bd. 1991). There is no question regarding compliance with the city-grade coverage rules using standard

prediction methods. *Compare Channel 32 Broadcasting Company*, 5 FCC Rcd 7373, 7374 (Rev. Bd. 1990). Finally, we believe that city-grade coverage waivers, unlike spacing waivers, can be granted to one applicant even if another applicant is deemed to be in compliance. While the existence of fully spaced sites may be relevant as a public interest factor, it is not dispositive. *Compare Millard Orick, Jr.*, 89 FCC 2d 571 (Rev. Bd. 1982) *with dicta* in *Vela Broadcasting Co.*, 2 FCC Rcd 3663, 3665-66 (Rev. Bd. 1987), and reference to *de minimis* waivers in *Channel 32 Broadcasting Company, supra*, at 7375. Here, where the coverage shortfall is not significant and well established and where it is not apparent under standard prediction methods, the public interest would clearly favor a waiver.

Decision, at ¶ 11.

4. ACCORDINGLY, IT IS ORDERED, That the petition for reconsideration, filed September 21, 1992, by Radio Representatives, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

* Board Member Esbensen, who authored the Board's *Decision* in this case, died on April 6th of this year after a lengthy illness. Board Chairman Marino, who did not sit on the original panel, has studied the record and is participating on the matter now before us. Action in the instant case was deferred during Mr. Esbensen's absence, in the hope that he would return to duty.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: May 17, 1993

U S WEST COMMUNICATIONS, INC., CENTRAL UTAH TELEPHONE, INC. AND BEAR LAKE COMMUNICATIONS, INC. JOINT PETITION FOR WAIVERS OF PART 36 APPENDIX-GLOSSARY AND OF PRICE CAP RULES (AAD 93-42)

Public Comment Invited

Comment date: June 16, 1993
Reply date: June 30, 1993

On April 6, 1993, US West Communications, Inc. (US West), Central Utah Telephone, Inc. (Central Utah), and Bear Lake Communications, Inc. (Bear Lake) filed a joint petition for waiver of the definition of "study area" set forth in the Appendix Glossary of Part 36 of the Commission's rules. This waiver would allow the parties to change their study area boundaries to reflect the sale of US West's Scofield exchange to Central Utah and US West's Garden City exchange to Bear Lake. The waiver would also allow Central Utah and Bear Lake to continue to be regulated under rate of return. The parties include an order by the Public Service Commission of Utah approving these transactions.

Parties may file comments on this petition no later than **June 16, 1993.** Replies should be filed by **June 30, 1993.** Comments should reference AAD 93-42. A copy of each pleading should be sent to Jacqueline Spindler, Common Carrier Bureau, 2000 L Street N.W., Suite 812, Washington, D.C., 20554, and to International Transcription Service, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C., 20037. Copies are also available from ITS.

For further information contact Jacqueline Spindler at 202-634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications	Transmittal Nos. 4970
Tariff F.C.C. Nos. 2 and 14	and 5128

ORDER

Adopted: May 13, 1993; **Released: May 13, 1993**

By the Chief, Tariff Division, Common Carrier Bureau:

1. On March 30, 1993, AT&T Communications (AT&T) filed Transmittal No. 4970 which provides that the Responsible Organization (Resp Org), rather than the 800 service provider, is AT&T's customer for 800 Directory Assistance service.[1] The transmittal also revises the tariff to state that (1) a single monthly charge applies to "Resp Orgs for numbers used with service where any carrier offers nationwide 800 service" and (2) monthly charges by state apply to "Resp Orgs for numbers used with service where no carrier offers nationwide 800 service." AT&T Tariff F.C.C. No. 2, proposed Section 9.4.3.[2]

2. On April 14, 1993, Sprint Communications Company LP (Sprint) and MCI Telecommunications Corporation (MCI) each filed a petition to reject or, in the alternative, to suspend and investigate Transmittal No. 4970. On April 22, 1993, AT&T filed a reply.

3. Sprint contends that if AT&T lowered the national rate below the sum of the state-specific rates, then the proposed rate categorization would unjustly discriminate between carriers which provide nationwide service and those which provide nationwide service in partnership with other carriers. *Id.* at 2-3. To avoid this potential discrimination, Sprint proposes that the national rate be defined to apply to "Resp Orgs for 800 service provided on a nationwide basis," and that the state-specific rates be defined to apply to "Resp Orgs for 800 service not provided on a nationwide basis." *Id.* at 4.

4. In response, AT&T denies that it will revise its rates in an impermissibly discriminatory manner. AT&T Petition at 2 n.2. Also, AT&T claims that assertions concerning possible future action by AT&T are irrelevant to the Commission's review of the instant revisions. *Id.*[3]

5. The Tariff Division has reviewed the transmittals and all associated pleadings. We conclude that no compelling argument has been presented that the tariff provisions, as revised, are so patently unlawful as to require rejection, and that no question has been presented that warrants investigation at this time.

6. Accordingly, IT IS ORDERED that the petition to reject or, in the alternative, to suspend and investigate AT&T Communications Tariff F.C.C. Nos. 2 and 14, Transmittal No. 4970, filed by Sprint Communications Company LP, IS DENIED.

7. IT IS FURTHER ORDERED that the petition to reject or, in the alternative, to suspend and investigate AT&T Communications Tariff F.C.C. Nos. 2 and 14, Transmittal No. 4970, filed by MCI Telecommunications Corporation, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

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[1] *See* Provision of Access for 800 Service, Report and Order, CC Docket No. 86-10, 4 FCC Rcd 2824 (1989); Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rule Making, 6 FCC Rcd 5421 (1991); Order, 7 FCC Rcd 8616 (1992); Second Report and Order, 8 FCC Rcd 907 (1993); Memorandum Opinion and Order on Further Reconsideration, 8 FCC Rcd 1038 (1993); Order, 8 FCC Rcd 1423 (1993).

[2] In addition, as initially filed, AT&T proposed requiring the Resp Org to provide AT&T with a list of carriers, by 800 number, that provide service for which they are Resp Org, and to notify AT&T of any changes to this list in writing, within 48 hours of such change. AT&T Tariff F.C.C. No. 2, proposed Section 9.2.5. On May 10, 1993, pursuant to Special Permission No. 93-342, AT&T filed Transmittal No. 5128 to revise proposed Section 9.2.5. to require that the Resp Org provide AT&T "certification by 800 number that the carrier(s) offers Nationwide 800 Service or Non-nationwide 800 Service . . . |, and| notify AT&T of any changes to this list in writing, within 48 hours of such change." AT&T Tariff F.C C. No. 2, revised proposed Section 9.2.5.

[3] Sprint and MCI also challenged the revisions established by Transmittal 4970 described in footnote 2, *supra*. As set forth *supra* at paragraphs 2 and 3, after filing its reply, AT&T filed revisions to proposed Section 9.2.5, which substantially modifies the requirements to which the petitioners objected.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Guam Telephone Authority
Tariff F.C.C. No. 1

Transmittal No. 1

ORDER

Adopted: May 17, 1993; **Released: May 17, 1993**

By the Chief (Acting), Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. The captioned transmittal, the first filed by the Guam Telephone Authority (GTA) with the Federal Communications Commission, represents the first step taken by GTA to comply with specific requirements imposed by the Commission's 1992 *Show Cause Order*.[1] That Order directed GTA to show cause why it should not be required to file lawful interstate and foreign exchange access tariffs with the Commission, and why the Commission should not prescribe such tariffs in the event GTA failed to file them. GTA characterizes Transmittal No. 1 as an interim tariff, intended to remain effective for approximately 8 months while GTA prepares to convert to a usage sensitive access tariff. Petitions to reject or suspend were filed by IT&E Overseas, Inc. (IT&E), MCI Telecommunications Corporation (MCI), and PCI Communications, Inc. (PCI). GTA Transmittal No. 1 is scheduled to become effective May 18, 1993.

2. In the *Show Cause Order* the Commission determined that the Territory of Guam and GTA are subject to the Communications Act, that the Commission has exclusive jurisdiction over interstate and foreign common carrier communications originating or terminating on Guam, and that GTA had violated Sections 201 and 202 of the Act by a variety of unjust and unreasonable practices, generally directed to retarding the development of interexchange competition on Guam.

3. The *Show Cause Order* also directed GTA, during the pendency of that proceeding, to refrain from causing additional harm to long distance carriers serving Guam. GTA is prohibited from: (1) disconnecting, or otherwise impairing or degrading service, to any interstate or foreign interexchange common carrier; (2) altering the grade of service received by such common carrier absent an acknowledged written request; and (3) increasing charges for any interstate or foreign exchange access service without prior FCC approval. In addition, GTA is required to: (1) continue to bill, collect, and remit charges for interstate and foreign common carrier communications services; (2) continue to provide billing information to interconnected interstate and foreign interexchange carriers; and (3) continue to provide interconnection and other exchange access services to interexchange carriers in accordance with reasonable requests.[2]

4. In addition to its answer to the *Show Cause Order*, which generated responsive filings from other parties, GTA on April 19, 1993 submitted its "Integrated Compliance Plan and Reply," indicating that it could not immediately comply with Commission access policies, and proposing a six-stage process for bringing interconnection and settlement practices on Guam into general compliance with the Commission's access charge policies. GTA projects this process will conclude in 1997. The first step in this sequence is the interim tariff before us, which is expected to remain in effect for approximately 8 months.[3]

5. GTA's interim tariff contains the regulations, rates and charges applicable to the provision of interstate and foreign exchange access service on Guam. Interexchange carriers seeking to offer interstate service originating or terminating on Guam would obtain local exchange access under the terms of this interim tariff.

II. PLEADINGS

6. IT&E states that GTA's transmittal was improperly filed on 15 days' notice, without even "courtesy notice" to interexchange carriers, the Guam legislature, or the Guam PUC, and represents a "surprise" transitional tariff that seeks to further enhance an "already unconscionable level of access compensation." IT&E Petition at 2-4, 6-9. IT&E contends GTA could not justify more than approximately $0.08 per access minute, compared to the $0.24 current charged under existing settlement agreements, and adds that the net effect of the tariff is to further increase, and continue to increase, the cost of access, although the *Show Cause Order* requires prior Commission approval for increased access charges. *Id.* at 4-6, 7, 9-10. IT&E also asserts that the transmittal fails to codify the prior stipulation reached between GTA and the consultant retained by the Guam PUC as part of its investigation of GTA practices,[4] and which the "carrier parties generally approve," and conflicts with that stipulation in several respects. *Id.* at 10-11.

7. MCI asserts that the rates contained in Transmittal No. 1 are "essentially a mirror image" of the existing interconnection and settlement process on Guam. MCI contends that process was declared inconsistent with exclusive Commission jurisdiction by the *Show Cause Order*, and the existing practices were determined to violate

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[1] IT&E Overseas, Inc. and PCI Communications, Inc., Petition for Emergency Relief and Expedited Declaratory Ruling, Memorandum Report and Order, 7 FCC Rcd 4023 (1992) (*Show Cause Order*), *as modified in* 7 FCC Rcd 4670 (1992) (extending filing dates), *petitions for recon. pending.*

[2] *Id.* at 4026-27, para. 16.

[3] An opportunity for public comment on GTA's Integrated Compliance Plan and Reply was established by Public Notice, Guam Telephone Authority Files Compliance Plan, FCC 93-525 (released May 6, 1993).

[4] The Stipulation is attached to the Interim Order of the Guam Public Utilities Commission Decision in Docket Nos. 90-001 and 90-003, Dec. 17, 1991.

the Communications Act, so that the Commission has "no alternative" other than to reject the transmittal. MCI Petition at 1-2.

8. PCI states that the interim tariff is based on existing interconnection arrangements that are reflected in a December 1991 Stipulation between GTA, the Guam Public Utility Commission and IT&E, and that under the Compliance Plan usage-sensitive rates will be put into effect January 1, 1994, while cost-based rates complying with Part 69 of the Commission's Rules will not be tariffed until January 1, 1997. PCI asserts the interim filing must be rejected on procedural grounds, as GTA filed its tariff on 15 days' notice though it is not a new carrier, its rates and regulations are not between points on new lines, and the tariff filing does not involve changes in effective tariff provisions. Absent special permission or other exemption from the properly applied Rule, either Section 61.58(d)(2) or (d)(3), PCI contends, the tariff is procedurally defective. PCI Petition at 1-3.

9. More fundamentally, according to PCI, the transmittal violates both the letter and spirit of the *Show Cause Order* by rendering in tariff form interconnection agreements formalized in the Stipulation that do not satisfy the Commission's access charge rules or that Order and would serve to perpetuate the "existing unlawful regime" until January 1997. PCI Petition at 3-4. In addition, PCI states, the interim tariff contravenes the Commission directive that PCI continue to receive lineside service at current rates during the pendency of the show cause proceeding,[5] in that, under the terms of the compliance plan, lineside rates would rise sharply in January 1994 without regard to the status of that proceeding.

10. GTA states in its opposition that, while the tariffed rates essentially mirror the existing interconnection and settlement process, it does not follow, as MCI asserts, that those practices are facially unlawful. Rather, because the tariff reflects the interconnection arrangements of the December 1991 Stipulation and not the arrangements determined unlawful by the *Show Cause Order*, MCI's petition is unfounded in this respect. GTA Opp. at 2-3. GTA adds that the origins of the present interconnection arrangements in a Guam PUC proceeding represents no conflict with exclusive Commission jurisdiction, but rather an effort to ameliorate possible jurisdictional concerns. *Id.* GTA characterizes many of PCI's contentions as repetitive of the IT&E arguments and requiring no separate response, but responds to PCI's charge of dilatory procedure by stating that its Compliance Plan is intended to reasonably balance federal regulatory requirements with continuing service at reasonable rates to local ratepayers. *Id.* at 7.

11. GTA defends its 15 day notice procedure as permissible under the Rules, and not prejudicing any party's rights because only codifying existing arrangements, and contends that rejection would not be appropriate even if it violated notice requirements. GTA Opp. at 4-5. GTA notes it submitted an application for special permission to correct errors in the tariff regarding the application of certain charges to lineside carriers, and a typographic error affecting the calculation of gross revenue. *Id.* GTA states that several IT&E assertions that the interim tariff deviates from the Stipulation are unfounded, and in any case that the Stipulation has never been addressed by the Commission. *Id.* at 5-7. As to IT&E's other contentions, GTA responds that the tariff proposes no change in existing access arrangements (*Id.* at 4).

III. DISCUSSION

12. We have reviewed GTA Transmittal No. 1, the petitions, and GTA's opposition. While the transmittal falls short of full compliance with the Commission's access charge policies, given the recent history of telecommunications practices on Guam, the existence of pending proceedings to determine whether and to what extent the Compliance Plan proposes a reasonable procedure for addressing the *Show Cause Order*, and the need to consider petitions for reconsideration of that Order, we conclude no compelling argument has been presented that the instant tariff is so patently unlawful as to require rejection. We further conclude that the petitions do not demonstrate that an investigation is warranted at this time.

13. The unusual circumstances occasioning this transmittal require us to consider carefully whether rejecting or suspending the transmittal would serve the public interest. The transmittal is not submitted by GTA, nor viewed by the Common Carrier Bureau, as a complete response to the determinations made in the *Show Cause Order*, but rather only as an interim tariff which, because it establishes a generally applicable, federally tariffed basis for the provision of interexchange access, represents a significant improvement over the nonuniform and untariffed arrangements determined to be unlawful in the *Show Cause Order*.

14. While we do not permit tariffs determined to be patently unlawful to remain in effect, questionable tariffs may remain effective for a reasonable interim period during which the Commission seeks to establish a more permanent rate structure.[6] The "reasonable interim period" is determined in light of the adequacy of the record needed to act on rates, and the Commission's discretion to order its own proceedings.[7] Here, GTA has undertaken to improve its accounting practices. In addition, when the pending, separate proceedings initiated to consider GTA's Compliance Plan are resolved, they may alter the application of access charge requirements to reflect circumstances on Guam. Both record considerations and the coordination of multiple proceedings thus weigh in favor of permitting an interim tariff to become effective despite deficiencies. It is clearly preferable to have some tariff in effect, as a basis both for application of Commission standards and as part of the broader process of implementing changes needed to rectify deficiencies cited in the *Show Cause Order*, than to reject a series of transmittals until all aspects of the *Show Cause Order* have been clarified and fully implemented. For instance, the tariff supplants any private agreements that GTA may have insisted upon in past negotiations with carriers, and

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[5] *See* IT&E Overseas, Inc. and PCI Commuications, Inc., 7 FCC Rcd 4670 (Com. Car. Bur. 1992).

[6] MCI Telecommunications Corporation v. FCC, 627 F.2d 322, 338, 340 (1980) (*MCI/WATS*). *Accord* MCI Telecommunications Corporation v. FCC, 712 F.2d 517, 535 (1983) (*MCI/ENFIA*).

[7] *MCI/ENFIA, supra*, 712 F.2d at 535.

precludes threats of disconnection used to compel discriminatory division of revenues. Any discriminatory departures from the tariff provisions are subject to the Commission's formal complaint and enforcement procedures.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that the petitions to reject or to suspend and investigate Guam Telephone Authority Tariff F.C.C. No. 1, Transmittal No. 1, filed by IT&E Overseas, Inc., MCI Telecommunications Corporation, and PCI Communications, Inc., ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: May 18, 1993

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON ENTERPRISE TELCOM SERVICES, INC.'S PETITION FOR DECLARATORY RULING ON 800 SERVICES PRESUBSCRIPTION RULES FOR 800 SERVICE PROVIDERS AND RESPONSIBLE ORGANIZATIONS

On May 5, 1993, Enterprise Telcom Services, Inc. (ETS) filed a petition requesting that the Commission issue a declaratory ruling regarding 800 service access and 800 service customers' rights. ETS states that it resells, to both end users and other resellers, 800 service obtained from AT&T Communications (AT&T) pursuant to an option under AT&T's Tariff FCC No. 12. ETS asks the Commission to address the issue of a reseller's rights to interface with Responsible Organizations (RESPORGs) and to control the routing of 800 numbers. ETS states that the Commission currently is considering an emergency petition, filed by Allnet Communications Service, requesting a holding that only 800 End Using Subscribers be permitted to interface with RESPORGs for purposes of changing 800 service routing and assignment of 800 numbers. ETS argues that if the Commission should grant Allnet's request, ETS's right as a Tariff 12 customer of AT&T would be undermined.

ETS argues that, without a definitive ruling on this issue, underlying carriers may take the position that a reseller's customers may claim the right to use the resold 800 numbers. Thus, ETS requests that the Commission clarify that all AT&T Tariff 12 customers, including those that engage in resale, have the same rights as other customers to interface with AT&T in its RESPORG capacity, and to control the use of each 800 number assigned to them as customers. In the alternative, ETS requests that the Commission declare that the reassignment of any 800 service number from an AT&T Tariff 12 customer to any other customer allows the original customer to avoid AT&T's Tariff 12 dollar volume commitment obligations.

Interested parties are to file comments on this petition by **June 4, 1993,** and reply comments by **June 14, 1993,** with the Secretary, FCC 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the petition can be obtained from ITS, Inc. at (202) 857-3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally,* 47 C.F.R. §§1.1200-1.1216. For further information contact Peggy Reitzel, Policy and Program Planning Division of the Commission Carrier Bureau, at (202) 632-1300.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ST. THOMAS & SAN JUAN TELEPHONE CO. File No. I-T-C-93-036

Application for authority to operate as an international resale carrier.

KEYSTONE TELECOMMUNICATIONS, INC. File No. I-T-C-93-070

Application for authority to operate as an international resale carrier.

INTERNATIONAL QUARTER PHONES, INC. File No. I-T-C-93-078

Application for authority to operate as an international resale carrier.

LONDONO ITS INC. File No. I-T-C-93-092

Application for authority to operate as an international resale carrier.

COMMUNICATIONS BUYERS GROUP, INC. File No. I-T-C-93-094

Application for authority to operate as an international resale carrier.

MOUNTAINEER LONG DISTANCE, INC. File No. I-T-C-93-095

Application for authority to operate as an international resale carrier.

PRINCETON TELECOMMUNICATIONS CORP. File No. I-T-C-93-096

Application for authority to operate as an international resale carrier.

LINKUSA CORPORATION File No. I-T-C-93-098

Application for authority to operate as an international resale carrier.

NATIONAL COMMUNICATIONS ASSOCIATION, INC. File No. I-T-C-93-099

Application for authority to operate as an international resale carrier.

TELEDIAL AMERICA OF NORTH CAROLINA, INC. File No. I-T-C-93-101

Application for authority to operate as an international resale carrier.

NORTH AMERICAN TELEPHONE - TPA, INC. File No. I-T-C-93-103

Application for authority to operate as an international resale carrier.

AMERICAN COMMUNICATIONS INTERNATIONAL, LTD. File No. I-T-C-93-105

Application for authority to operate as an international resale carrier.

CELLULAR LONG DISTANCE SERVICE CORP. File No. I-T-C-93-108

Application for authority to operate as an international resale carrier.

HOSPITALITY COMMUNICATIONS CORP. D/B/A HCC TELEMANAGEMENT File No. I-T-C-93-110

Application for authority to operate as an international resale carrier.

ALD COMMUNICATIONS, INC. File No. I-T-C-93-111

Application for authority to operate as an international resale carrier.

HERTZ TECHNOLOGIES, INC. File No. I-T-C-93-112

Application for authority to operate as an international resale carrier.

GROUP LONG DISTANCE, (USA) INC. File No. I-T-C-93-113

Application for authority to operate as an international resale carrier.

GTI TELECOM, INC. File No. I-T-C-93-114

Application for authority to operate as an international resale carrier.

U.S. SATELLITE TELECOMMUNICATIONS File No. I-T-C-93-115

Application for authority to operate as an international resale carrier.

WORLDTEL SERVICES, INC. File No. I-T-C-93-118

Application for authority to operate as an international resale carrier.

LEXINGTON TELEPHONE LONG DISTANCE CO., INC. File No. I-T-C-93-120

Application for authority to operate as an international resale carrier.

TELEDATA INTERNATIONAL, INC. File No. I-T-C-93-121

Application for authority to operate as an international resale carrier.

COMMUNICATIONS GATEWAY NETWORK, INC. File No. I-T-C-93-122

Application for authority to operate as an international resale carrier.

PREFERRED NETWORK File No. I-T-C-93-125

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 12, 1993; Released: May 25, 1993

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched services to the general public on a resale basis by St. Thomas & San Juan Telephone Co. (STSJ), Keystone Telecommunications, Inc. (Keystone), International Quarter Phones, Inc. (IQPI), Londono ITS Inc. (Londono), Communications Buyers Group, Inc. (CBG), Mountaineer Long Distance, Inc. (Mountaineer), Princeton Telecommunications Corp. (Princeton), LinkUSA Corp. (LinkUSA), National Communications Association, Inc. (NCA), Teledial America of North Carolina, Inc. (Teledial of NC), North America Telephone - TPA, Inc. (TPA), American Communications International, Ltd. (ACI), Cellular Long Distance Service Corp. (CLDS), Hospitality Communications Corp. d/b/a HCC Telemanagement (HCC), ALD Communications, Inc. (ALD), Hertz Technologies, Inc. (Hertz), Group Long Distance (USA) Inc. (GLD), GTI Telecom, Inc. (GTI), U.S. Satellite Telecommunications (USST), WorldTel Services, Inc. (WorldTel), Lexington Telephone Long Distance Co., Inc. (LTLD), TeleData International, Inc. (TDI), Communications Gateway Network, Inc. (CGN) and Preferred Network (PN).

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-93-036, I-T-C-93-070, I-T-C-93-078, I-T-C-93-092, I-T-C-93-094, I-T-C-93-095, I-T-C-93-096, I-T-C-93-098, I-T-C-93-099, I-T-C-93-101, I-T-C-93-103, I-T-C-93-105, I-T-C-93-108, I-T-C-93-110, I-T-C-93-111, I-T-C-93-112, I-T-C-93-113, I-T-C-93-114, I-T-C-93-115, I-T-C-93-118, I-T-C-93-120, I-T-C-93-121, I-T-C-93-122 and I-T-C-93-125 ARE GRANTED; and

a. STSJ is authorized to provide international switched services by the resale of the international switched voice services set forth in ATC's Tariff F.C.C No. 2, Worldcom's Tariff F.C.C. No. 1, TRT/FTC's Tariff F.C.C. No. 15, Sprint's Tariff F.C.C. No. 1, RCI's Tariff F.C.C. No. 1, WilTel's Tariff F.C.C. No. 2 and Fonorola's Tariff F.C.C. No. 1 between the U.S. and international points listed in those tariffs;

b. Keystone is authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1, Sprint's Tariffs F.C.C. Nos. 1 and 2, RCI's Tariff F.C.C. No. 1 and WilTel's Tariff F.C.C. No. 1 between the U.S. and international points listed in those tariffs;

c. IQPI is authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariff F.C.C. No. 1, MCI's Tariff F.C.C. No. 1, Sprint's Tariff F.C.C. No. 1 and ATC's Tariff F.C.C. No. 2 between the U.S. and international points listed in those tariff;

d. Londono, LTLD and PN are authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariff F.C.C. No. 1, MCI's Tariff F.C.C. No. 1 and Sprint's Tariff F.C.C. No. 1 between the U.S. and international points listed in those tariffs;

e. CBG is authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, Sprint's Tariffs F.C.C. Nos. 1 and 2, WilTel's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and international points listed in those tariffs;

f. Mountaineer is authorized to provide international switched services by the resale of the international switched voice services set forth in RCI's Tariff No. 1 between the U.S. and Canada;

g. Princeton is authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1, 2 and 12, MCI's Tariff F.C.C. No. 1, Sprint's Tariffs F.C.C. Nos. 1 and 2, WilTel's Tariffs F.C.C. Nos. 1 and 2, Litel's Tariff F.C.C. No. 1, C&W's Tariff F.C.C. No. 3 and West Coast Telecommunications' Tariff F.C.C. No. 1 between the U.S. and international points listed in those tariffs;

h. LinkUSA is authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariff F.C.C. No. 1, MCI's Tariff F.C.C. No. 1, Sprint's Tariff F.C.C. No. 1, Allnet's Tariff F.C.C. No. 5, Advanced Telecommunications' Tariff F.C.C. No. 2, C&W's Tariff F.C.C. No. 3, COM Systems' Tariff F.C.C. No. 1, LDDS' Tariff F.C.C. No. 1, Metromedia Communications' and MDL Long Distance's Tariff F.C.C. No. 2, RCI's Tariff F.C.C. No. 2, Schneider Communications' Tariff F.C.C. No. 1, Southern Pacific Telecom's Tariff F.C.C. No. 1, WUI's Tariff F.C.C. No. 28 and WilTel's Tariff F.C.C. No. 2 between the U.S. and international points listed in those tariffs;

i. NCA is authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariff F.C.C. No. 1 and TRT/FTC's Tariff F.C.C. No. 15 between the U.S. and international points listed in those tariffs;

j. Teledial of NC is authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, WilTel's Tariff F.C.C. No. 1, MCI's Tariff F.C.C. No. 1 and Sprint's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and international points listed in those tariffs;

k. Hertz and CGN are authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, WilTel's Tariff F.C.C. No. 1, MCI's Tariff F.C.C. No. 1 and Sprint's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and international points listed in those tariffs;

l. HCC, TPA and GTI are authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1, Sprint's Tariffs F.C.C. Nos. 1 and 2, C&W's Tariff F.C.C. No. 3, WilTel's Tariffs F.C.C. Nos. 1 and 2, Metromedia's Tariff F.C.C. No. 2, Litel's Tariff F.C.C. No. 1, and Advanced Telecommunications' Tariff F.C.C. No. 2 between the U.S. and international points listed in those tariffs;

m. ACI is authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1, Allnet's Tariff F.C.C. No. 5, Metromedia Communications' Tariffs F.C.C. Nos. 1 and 2, LDDS' Tariff F.C.C. No. 1, Rochester Telecommunications Services' Tariff F.C.C. No. 1, Sprint's Tariffs F.C.C. Nos. 1 and 2, WilTel's Tariffs F.C.C. Nos. 1 and 2, C&W's Tariff F.C.C. No. 3 and Worldcom's Tariff F.C.C. No. 1 between the U.S. and international points listed in those tariffs;

n. CLDS is authorized to provide international switched services by the resale of the international switched voice services set forth in MCI's Tariff F.C.C. No. 1 and ACC Long Distance's Tariff F.C.C. No. 1 between the U.S. and international points listed in those tariffs;

o. ALD is authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 12 between the U.S. and international points listed in those tariffs;

p. GLD is authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariff F.C.C. No. 1 and Sprint's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and international points listed in those tariffs;

q. USST is authorized to provide international switched services by the resale of the international switched voice services set forth in LDDS' Tariff F.C.C. No. 1 between the U.S. and international points listed in that tariff;

r. WorldTel is authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1, Sprint's Tariff F.C.C. No. 1 and WilTel's Tariff F.C.C. No. 1 between the U.S. and international points listed in those tariffs; and

s. TDI is authorized to provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. No. 1 and 2, MCI's Tariff F.C.C. No. 1, Sprint's Tariffs F.C.C. Nos. 1 and 2, C&W's Tariff F.C.C. No. 3, WilTel's Tariff F.C.C. No. 2 and ATC's Tariff F.C.C. No. 1 between the U.S. and international points listed in those tariffs.

3. IT IS FURTHER ORDERED that the applicants shall obtain any necessary operating agreements in each of the countries to which they will provide service and shall file them with the Commission within 30 days of their execution.

4. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicants seek authority to provide. The transmission of money is not considered to be a common

carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li, Chief
International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-60

In the matter of

Co-Channel Protection Criteria
for Part 90, Subpart S Stations
Operating Above 800 MHz

ORDER EXTENDING COMMENT AND REPLY COMMENT PERIODS

Adopted: May 14, 1993; Released: May 17, 1993

By the Acting Chief, Private Radio Bureau:

1. On March 11, 1993, the Commission adopted a Notice of Proposed Rule Making in the above-captioned proceeding.[1] The specified deadlines for comments and reply comments were May 28, 1993 and June 14, 1993, respectively. On May 11, 1993, the National Association of Business and Educational Radio, Inc., the Industrial Telecommunications Association, Inc., the American Mobile Telecommunications Association, Inc. and Motorola, Inc. (the "Joint Petitioners") requested that we extend the date for filing comments to July 13, 1993, and the reply comment date to July 28, 1993. In support of their request, the Joint Petitioners indicate that this proceeding raises complex technical issues that require additional time to thoroughly evaluate. Joint Peitioners also note the press of other rule making proceedings could prevent the issues in this proceeding from receiving the attention they deserve.

2. The proposals set forth in the *Notice* will have a significant and lasting impact on all users of 800 and 900 MHz spectrum. We therefore agree that the public interest would be served by providing interested parties with some additional time to perform technical analyses and, where possible, develop an industry consensus. In our view, however, a forty-five (45) day extension on the Comment date is excessive, and would cause an unacceptable delay in our regulatory processes.

3. Accordingly, IT IS ORDERED, pursuant to Section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331, the Motion for Extension of Time filed by the Joint Petitioners is GRANTED to the extent indicated herein and otherwise denied, and that the deadline for filing comments in response to the subject *Notice of Proposed Rule Making* is extended to **June 14, 1993,** and the deadline for filing reply comments is extended to **July 6, 1993.**

FEDERAL COMMUNICATIONS COMMISSION

Beverly G. Baker
Acting Chief, Private Radio Bureau

[1] Notice of Proposed Rule Making, PR Docket No. 93-60, 8 FCC Rcd 2454 (1993).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-543

In re Applications of

MEDIA WEST BROADCAST GROUP, INC.	File No. BPH-871110MF
RIO AMERICANO COMMUNICATIONS CORP.	File No. BPH-871110MM
OLYMPIC BROADCASTERS, INC.	File No. BPH-871110MY
FAHLDA BROADCASTING COMPANY, A CALIFORNIA LIMITED PARTNERSHIP	File No. BPH-871110NB
OLD SACRAMENTO BROADCASTING CO., INC.	File No. BPH-871110NJ
JAM FM LIMITED PARTNERSHIP	File No. BPH-871110NL
JACK L. POWELL	File No. BPH-871110NM
GEORGE K. FUNG	File No. BPH-871110NU

For Construction Permit for a New FM Station on Channel 278A in Sacramento, California

MEMORANDUM OPINION AND ORDER

Adopted: May 17, 1993; Released: May 25, 1993

By the Commission:

1. This memorandum opinion and order addresses two questions certified to us by the Review Board regarding the application of the "daytimer's preference." *Lizardo-Franich Partnership*, 7 FCC Rcd 6256 (Rev. Bd. 1992). The daytimer's preference was established in *FM Broadcast Assignments*, 101 FCC 2d 638, 645-47 ¶ ¶ 20-23 (1985), *recon. granted in part*, 59 RR 2d 1221 (1986), *aff'd sub nom. National Black Media Coalition v. FCC*, 822 F.2d 277 (2d Cir. 1987), to give comparative credit under some circumstances, to the owners of daytime-only AM radio stations applying for new FM facilities in the same community.

I. BACKGROUND

2. The Board's questions arise because the factors that qualitatively enhance the applicants' proposals to integrate ownership into management appear decisive in this case. ALJ Edward Luton found that 10 of the applicants in this proceeding were entitled to 100 percent quantitative integration credit. *Lizardo-Franich Partnership*, 7 FCC Rcd 1678, 1692 ¶ ¶ 192-93 (I.D. 1992). The ALJ further found that three of these applicants -- Fahlda Broadcasting Company, A California Limited Partnership, JAM FM Limited Partnership, and Jack L. Powell -- were entitled to more than one substantial qualitative enhancement. *Id.* at 1692-93 ¶ ¶ 193-98.[1]

3. The ALJ ranked those three applicants: (1) Fahlda, (2) JAM, and (3) Powell. He found that all three proposals were substantially enhanced by local residence and civic participation. He found that the Fahlda and JAM proposals were significantly enhanced by minority ownership and that Powell received equivalent credit as a daytimer, since he is the owner and manager of daytime-only station KJAY(AM) in Sacramento. Thus, the decisive differences in ranking resulted from Fahlda's and JAM's slight additional credit for broadcast experience.[2]

4. On appeal, the Board expressed doubt as to the credit given Powell relative to Fahlda and JAM. The Board first noted a potential conflict in the showing Powell made to demonstrate his entitlement to a daytimer preference. In accordance with Commission policy, Powell pledged to divest himself of KJAY(AM) within three years. Additionally, also in accordance with Commission policy, Powell pledged to serve as the general manager of the proposed FM station. The Board questioned whether Powell had adequately reconciled his proposal to be integrated full-time at the FM station with his continued involvement at the AM station prior to divestiture. 7 FCC Rcd at 6257 ¶ ¶ 3-5.

5. In this regard, however, the Board questioned whether it was consistent with Commission policy to require daytimers to demonstrate full-time integration at the proposed FM station prior to divestiture of the AM station. The Board suggested that this requirement might tend to frustrate the Commission's intention of aiding daytimers. 7 FCC Rcd at 6257-58 ¶ ¶ 6-7.

6. As an additional matter, the Board raised a second question. The Board observed that, in establishing the daytimer preference, the Commission characterized the credit given as upgrading the value of broadcast experience, and that Powell in fact had over 25 years of experience. The Board suggested that it might be anomalous that Fahlda and JAM should prevail over Powell based on their

[1] The ALJ did not mention in his ultimate conclusions that a fourth applicant, Old Sacramento Broadcasting Co., Inc., was also entitled to credit for local residence and civic participation, minority ownership, and broadcast experience. 7 FCC Rcd at 1691 ¶ 178.

[2] Fahlda also received credit for female ownership. Recently, however, the United States Court of Appeals for the District of Columbia Circuit held that the gender preference is unconstitutional. *Lamprecht v. FCC*, 958 F.2d 382 (D.C. Cir. 1992). Thus, female ownership is no longer a factor in this case.

lesser experience. The Board therefore sought guidance as to the proper method of weighing the qualitative factors in the present case. 7 FCC Rcd at 6258 ¶ 8.

7. Accordingly, the Board certified the following questions to the Commission:

> (1) Whether it is mandatory, for the award of an AM Daytimer preference (and/or ownership/management integration credit), that the subject applicant pledge to substantially relinquish a significant management position at the AM station, pending divestiture; and
>
> (2) Whether, in calculating the comparative preferences in cases involving an AM daytimer, the Board must treat separately and absolutely discretely the sub-elements of "best practicable service" or whether it may consider the strongest record overall in awarding a dispositive preference for "best practicable service."

92R-75 at ¶ 9.

8. The parties were requested to submit comments on these questions. *Media West Broadcast Group*, FCC 92I-081 (Oct. 5, 1992).[3]

II. CERTIFIED QUESTION (1)

COMMENTS

9. Media West, JAM, and Fahlda argue that daytimers should bear the burden of reconciling their integration at the proposed FM station with their continued participation at the AM station prior to divestiture. They observe that, in creating the daytimer policy, the Commission stated that the integration of daytimers would be evaluated by existing and generally applicable standards.[4] According to these parties, this includes the need to reconcile integration proposals with conflicting obligations. *See, e.g., Naguabo Broadcasting Co.*, 6 FCC Rcd 4879, 4880 ¶ ¶ 7-8 (1991), *recon. granted in part*, 7 FCC Rcd 1696 (1992). Media West and Fahlda assert that such an approach creates no undue burden on daytimers, since they could easily: (1) reduce their participation at the AM station, (2) show that the AM station requires little time, or (3) pledge to divest the AM station prior to the commencement of program test authority.

10. Media West contends that it is important to hold daytimers to their integration proposals prior to divestiture, because station policies tend to be established during a station's start up period. Similarly, Fahlda submits that a realistic plan to co-manage the AM and FM stations is necessary to make sure both that the AM station is not "run into the ground" prior to divestiture (when it would be available to potential minority buyers) and that the AM/FM combination will serve the public interest. Fahlda also suggests that giving daytimers a lucrative AM/FM combination would be an undue benefit.

11. Powell[5] and the Mass Media Bureau urge that requiring a strict integration showing prior to divestiture would be inconsistent with the Commission's intention of assisting daytimers. They maintain that, in giving daytimers three years to divest, the Commission recognized that during this time an exception would have to be made to the normal diversification and integration analysis. They also maintain that requiring a daytimer to curtail relations with the AM station prior to divestiture might have an adverse impact on the operation of the AM station.

DISCUSSION

12. We agree with Powell and the Bureau that, prior to divestiture, daytimers should be free to co-manage their AM and FM stations without suffering a loss of integration credit. Although, as Powell's opponents point out, we stated that a daytimer's FM integration proposal would be evaluated under the same standards applicable to others, we did not specifically address the situation prior to divestiture. Upon reflection, we conclude that this omission needs to be rectified.

13. In our report and order establishing the daytimer's preference, we addressed an analogous question involving the treatment of the diversification criterion. 101 FCC 2d at 646-47 ¶ ¶ 22-23, nn.15, 18; 59 RR 2d at 1228-29 ¶ ¶ 19-20. We noted that, in general, the co-ownership of an AM and FM station in the same community would warrant a diversification demerit and that in past cases we have required a divestiture pledge of co-owned stations prior to the commencement of program test authority to avoid such a demerit. Nonetheless, we found that the unique public interest factors that merit encouraging daytimers to apply for new FM facilities warranted giving daytimers three years to divest and not assessing any demerit for the temporary co-ownership that would result.

14. We will follow this same approach with respect to integration. To qualify for a daytimer's preference, an applicant must have substantially participated in the management of the AM station and must propose to be integrated at the proposed FM station. In view of these factors, it is foreseeable that, prior to divestiture, there might be situations where the daytimer's efforts to continue management of the AM station would from time-to-time

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[3] Before the Commission are: (1) Comments filed October 20, 1992 by Media West, Old Sacramento, Powell, JAM, and the Mass Media Bureau, and October 21, 1992 by Fahlda, and (2) reply comments filed October 27, 1992 by Media West and Powell and October 30, 1992 by Fahlda. Applicant George K. Fung joined in JAM's comments. Olympic Broadcasters, Inc. filed a statement on October 23, 1992 that it would not address the merits of the certified questions.

[4] The Commission stated:

> As is the case with all current integration enhancement credits, the extent to which an applicant must be integrated before receiving upgraded broadcast experience credit will be determined by existing integration standards as enunciated in the *Comparative Policy Statement*, 1 FCC 2d at 395-96, and pertinent cases subsequent thereto.

101 FCC 2d at 646 n.14.

[5] In addition to arguing that he should not be required to reconcile his continued participation at the AM with his integration at the proposed FM station, Powell asserts that he made an adequate showing reconciling his activities. JAM and Old Sacramento (referring to its exceptions before the Board) dispute that Powell's showing is adequate. The adequacy of Powell's showing is not before us at this time and it will not be considered further here.

detract from the daytimer's ability to devote full-time to the management of the FM station. Nonetheless, it would frustrate the public interest goals of the daytimer policy -- namely, giving AM daytimers with substantial management experience an advantage in competing for a new FM station in their community -- if we interpreted the requirements of the daytimer policy mechanistically to deprive the licensee of the ability to exercise the best judgment in these situations or if we treated these actions so as to jeopardize the daytimer's entitlement to comparative credit. We note in this regard that historically the joint management of co-located AM/FM combinations has been common and has generally served the public interest. If we believed that the temporary creation of such a combination were contrary to the public interest, we could have eliminated the potential for conflict by requiring divestiture or the surrender of the AM license upon the award of the FM license. We did not do so; instead, we provided for a three-year grace period. *See* 59 RR 2d at 1229 ¶ 20, n.36. Moreover, we do not wish to create an incentive for daytimers to arbitrarily curtail their involvement with the AM station -- possibly resulting in a deterioration of service and performance -- to obtain integration credit at the FM station.

III. CERTIFIED QUESTION (2)

COMMENTS

15. Media West, JAM, and Fahlda assert that, having received a daytimer preference, Powell is not entitled to any additional credit based on his broadcast experience. In their view, the daytimer preference represents the maximum credit an applicant may receive for broadcast experience and, thus, no additional credit may be awarded. JAM, Fahlda, and Old Sacramento assert that the Board's second question appears to contemplate an unwarranted departure from the Commission's standard practice for evaluating enhancement credit. Fahlda claims that the Board's question suggests that it contemplates a subjective, result-oriented analysis that would impermissibly diminish the weight due minority ownership. JAM and Fahlda observe that the daytimer preference was not intended to ensure that daytimers invariably prevail in proceedings in which they are involved.

16. Powell contends that it would be anomalous for him to receive no additional credit for his 27 years of broadcast experience as an AM owner-operator, despite the fact that an applicant needs only three years of experience to qualify for a daytimer preference. Powell notes that the Commission generally considers the length of an applicant's experience relevant to the public interest. Moreover, Powell asserts that the Comission's comparative analysis should not be applied in an unduly mechanical manner.

DISCUSSION

17. We agree with the parties arguing that there is no justification for "double-counting" a daytimer's broadcast experience. When we created the daytimer policy, we clearly stated that the nature of the advantage we were giving daytimers was to upgrade the weight due their broadcast experience to equal that of local residence or minority ownership. 101 FCC 2d at 645 ¶20, 646 n.14, 647 n.18; 59 RR 2d at 1227-28 ¶ 17. Without this upgrading, a daytimer's broadcast experience -- no matter how extensive -- would be entitled to considerably lesser weight.[6] Thus, whether a daytimer has five years of broadcast experience or 25 years, the effect of the daytimer policy is to enhance the weight due that experience up to the maximum that can be earned for local residence or minority ownership. Our policy provides no basis to award broadcast experience credit to a daytimer that would exceed the credit due a 100 percent minority-owned applicant.

18. In view of the foregoing, it remains for the Board to evaluate the applicants' respective advantages under each of the various enhancement factors -- local residence, minority ownership, and broadcast experience (which includes the daytimer's preference) -- and to balance these advantages in accordance with Commission precedent.

IV. ORDERS

19. ACCORDINGLY, IT IS ORDERED, That the Review Board IS DIRECTED to proceed with the disposition of this proceeding consistent with the foregoing.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[6] Broadcast experience was given minor significance so as not to prejudice qualified newcomers (which would include minorities) and because broadcast experience confers only an initial advantage. *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 396 (1965).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-266

In the Matter of

Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

ORDER

Adopted: May 14, 1993; Released May 14, 1993

By the Commission: Commissioner Barrett concurring and issuing a statement.

1. On April 1, 1993, the Commission adopted an order in this docket freezing until August 3, 1993, rates for cable services subject to regulation under the Cable Television Consumer Protection and Competition Act of 1992.[1] On that same day, the Commission established rules implementing rate regulation of cable service as required under the Cable Act. The text of our substantive rate regulation decision, including the language of our rules and requisite forms, was released May 3, 1993.[2] That decision provided that our cable rate regulations would become effective on June 21, 1993, approximately thirty days after publication in the Federal Register.

2. National Cable Television Association, Inc. (NCTA) petitions for a "limited stay" of this effective date, until the end of the rate freeze on August 3, 1993.[3] NCTA argues that one of the purposes of the freeze in effect until August 3 is to permit cable operators to make reasonable changes in service offerings in response to our rate regulations. It states that operators could not begin to do so until the text of our rate decision was released, and that even with its release on May 3, operators will not be able to effectuate responsive rate changes immediately because of the time necessary to absorb the lengthy text, assemble the requisite information and apply the formulas.[4] NCTA adds that even after they are calculated, rate changes require time to implement -- to notify subscribers and prepare bills accordingly. It states that franchise agreements sometimes require 30 days notice (or longer) of rate changes, and also requests that we preempt state and local notice requirements inconsistent with the new effective date it requests.[5] NCTA observes that with a freeze in effect, extending the effective date of rate regulation to August 3, 1993 poses no risk of interim higher rates.[6]

3. We continue to believe that prompt implementation of the provisions of the Cable Act will best further Congressional intent and serve the public interest. We do not wish to delay extending the Act's benefits to consumers. Therefore, because NCTA's request would have the effect of delaying the full implementation of the rate provisions of the Act for an 8 additional six weeks, we deny the request.[7] However, we also wish to avoid imposing a potentially unworkable implementation schedule and are concerned that some action may be warranted to prevent such an eventuality. In particular, we are concerned that local franchise notice requirements contained in certain local franchising agreements may at this juncture make it practically impossible for operators to meet local notice obligations while at the same time implementing rate adjustments responsive to our federal rules by the June 21 effective date. For example, we are aware that some agreements require cable operators to provide 30 days' advance notice of a change in rates or services at the local level. In order to allow for 30-day notice prior to new rates taking effect by the June 21 effective date of our rules, rate changes would have to be announced by May 21, less than three weeks after release of the text of our substantive rate decision. We do not believe that operators could, as a practical matter, react to the new regulatory scheme and fully implement responsive rate adjustments within such a constricted time frame, although we encourage operators to notify subscribers and the proper authorities of these implementing rate adjustments as soon as possible. We will therefore preempt any local franchise agreement or other state or local law or regulation to the extent that it requires an operator to give notice prior to June 21 of any rate change intended to comply with our rate regulations. This action should provide cable operators a reasonable initial period of time to respond to our new rules.

4. This limited preemptive action is within the scope of our authority under the 1992 Cable Act and is necessary to achieve our purpose of prompt effectuation of our

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[1] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Order*, MM Docket No. 92-266, FCC 93-176 (released Apr. 1, 1993), 58 Fed. Reg. 17530 (Apr. 5, 1993) (*Freeze Order*), *revised Erratum*, FCC 93-176, 58 Fed. Reg. 19626 (Apr. 15, 1993); Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §§ 3, 9, 14, 106 Stat. 1460 (1992), *amending* §§ 623, 612 and 622(c) of the Communications Act, *as codified at* 47 U.S.C. §§ 543, 532 and 542(c) (Cable Act).

[2] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-177 (adopted Apr. 1, 1993; released May 3, 1993).

[3] NCTA Petition for Limited Stay of Effective Date (dated May 6, 1993)(NCTA Petition). Dow, Lohnes & Albertson filed a petition in support of the NCTA Petition. Petition in Support for Limited Stay of Effective Date (dated May 12, 1993). In addition, several cable companies filed comments in support of NCTA's petition. Comments in Support of the Petition of the National Cable Television Association, Inc. for Limited Stay of the Effective Date by Blade Communications, Inc. *et al* (dated May 11, 1993).

[4] NCTA Petition at 1-4.

[5] NCTA Petition at 4-5.

[6] NCTA Petition at 5.

[7] *See generally Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921 (D.C. Cir. 1958); *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

regulatory scheme implementing the Cable Act.[8] We emphasize that our preemption is quite limited in duration. We do not preempt such local or state notice requirements to the extent they apply after the June 21, 1993 effective date. Operators will also have to comply with our customer service requirements, including the obligation to give subscribers 30 days' notice of rate increases, which become effective as of July 1, 1993.[9]

5. We are also concerned that cable operators and subscribers alike may be disadvantaged if logistical obstacles prevent operators from providing prompt, formal notification of rate and service changes. For example, we are aware that some systems operate with lead times of 30 to 60 days for the production of subscriber bills and other notifications. In addition, some systems use third-party contractors for billing purposes or have other business arrangements that present substantial difficulties in preparing and mailing notices on short notice. Therefore, we clarify that rates and rate structures will be deemed to be "in effect" if subscribers have been given at least some notification of such adjustments by that date, and if subsequent billing properly credits subscribers in a timely manner for the rates adjusted as of June 21. Thus, operators will have an additional reasonable period to prepare bills reflecting their new rates, provided that subscribers promptly are credited for these new rates as of June 21, 1993. We encourage operators to notify subscribers of their rate adjustments as soon as possible by any practicable means, such as newspaper ads or bulletins on the cable system. In order to be in compliance with the effective date, however, this notice must be given no later than June 21, 1993.

6. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i),(j) and 47 C.F.R. § 1.45(e), that the Petition for Limited Stay of Effective date by NCTA and the Petition in Support for Limited Stay of Effective Date by Dow, Lohnes, & Albertson ARE DENIED.

7. IT IS FURTHER ORDERED that any state or local requirements that cable operators give notice, prior to June 21, 1993, of rate changes intended to effectuate compliance with our rate regulations ARE HEREBY PREEMPTED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[8] *See City of New York v. FCC*, 486 U.S. 57 (1988); *Fidelity Federal Savings and Loan Association v. de la Cuesta*, 458 U.S. 141 (1982).

[9] *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Consumer Protection and Customer Service, Report and Order*, MM Docket No. 92-263, FCC 93-145 (released Apr. 7, 1993), *revised, Erratum*, FCC 93-145 (released Apr. 15, 1993), 58 Fed. Reg. 21107 (Apr. 19, 1993).

Concurring Statement
of
Commissioner Andrew C. Barrett

In re: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation

I do not usually issue statements in conjunction with Commission stay actions. However, with this action today, I believe that there is a need to be more thorough in assessing effective date decisions when implementing complex proceedings such as cable rate regulation. In this case, it is not clear to me that the FCC has developed sufficient rationale to support a June 21 effective date for refund liabilities. I have seen no clear analysis which reflects the fact that we established the June 21 effective deadline based on a practical, market-oriented assessment of how much time it was likely to take cable operators to: 1. Analyze the impact of the Commission's large, complex rate regulation order; 2. Make adjustments to rates based on any channel lineup changes that may result from retransmission consent deadlines and negotiations; 3. Assess other Cable Act requirements with respect to their impact on rates, including the further notice of proposed rulemaking on the cable rate benchmarks; and 4. Make the necessary business decisions regarding rate configurations, billing and subscriber notification requirements. Without this type of analysis, I am less comfortable with the practical ramifications of imposing a June 21 effective date with regard to refund liability. At this point, it is not clear to me what harm would occur if the effective date of refund liability comported with the rate freeze period until August 3. If this implementation delay would have created some concern about interim rate increases after June 21, I would have preferred to deal more directly with that issue, while granting additional flexibility with regard to the effective date.

To the extent this Order grants relief from the 30-day local franchise notice deadline prior to June 21, I support it. I hope that this limited relief grants sufficient time to allow for legitimate rate regulation compliance efforts. However, I do not believe that the Order sufficiently explains the basis for a June 21 effective date deadline, in light of the market-based actions required to comply with our 475-page rate regulation Order, and the rate implications of other 1992 Cable Act requirements. As I have indicated in the past, I fully understand our responsibility to implement the 1992 Cable Act.[1] I will continue to engage in the full range of our enforcement responsibilities under the 1992 Cable Act. However, I also remain aware that companies need reasonable periods of time to assess the full impact of these complex regulations, bring their operations into compliance, and realign their employee efforts.[2] Given the complexity of our cable rate regulation Order, I concur in this action.

[1] See, Separate Statement of Commissioner Andrew C. Barrett, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 [Cable Rate Regulation], April 1, 1993.

[2] See, Separate Statement of Commissioner Andrew C. Barrett, Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992 -- Program Access Provisions, April 1, 1993. [adopting 120-day period for transition]

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-375

In re Applications of

FOX TELEVISION STATIONS, INC. File No. BRCT-880801LW

For Renewal of License of Station
KTTV(TV) Los Angeles, California

and

RAINBOW BROADCASTING, INC. File No. BPCT-881101KH

For Construction Permit for a New
Commercial Television Station
in Los Angeles, California

ORDER

Adopted: May 19, 1993; Released: May 25, 1993

By the Review Board: MARINO (Chairman), BLUMENTHAL and GREENE.

1. The Board has before it a Third Motion To Reopen And To Enlarge The Issues, filed by Rainbow Broadcasting, Inc. on May 10, 1993. In essence, the motion before us seeks to oppose the waiver of 47 CFR § 73.3555(d) sought with respect to the ownership by Fox Television Stations, Inc. of WNYW-TV, New York, N.Y. and Fox principal Rupert Murdoch's proposed acquisition of the *New York Post*. Rainbow claims that "Fox has misrepresented repeatedly to the FCC that it is the only serious bidder for the *Post*."[1]

DISCUSSION

2. By *Memorandum Opinion and Order*, FCC 93R-21, released May 19, 1993,[2] the Board denied Rainbow's Petition For Reconsideration, filed by it on April 9, 1993, seeking modification of our *Decision*, 8 FCC Rcd 2361 (Rev. Bd. 1993).[3] Having denied Rainbow's petition, the Board no longer has this proceeding before it.

3. ACCORDINGLY, Rainbow's Third Motion To Reopen And To Enlarge The Issues, filed May 10, 1993, IS DISMISSED.[4]

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

[1] Rainbow Motion at i.

[2] That *Memorandum Opinion and Order* was adopted on May 5, 1993; the delay in the release of that document is, as with most Board and Commission documents, a function of the printing arrangement between the FCC and the Department of Commerce, which reproduces most FCC documents for public distribution and the FCC Record. (There are occasional exceptions made with lengthy documents. *See, e.g., Decision, supra* para. 2; *Implementation of Sections 12 and 19 of the Cable Television Protection and Competition Act of 1992*, FCC 93-178, released April 30, 1993.)

[3] That *Memorandum Opinion and Order* concurrently denied a Fox "Motion For Referral," *see id.*, at n.2 and para. 9.

[4] Our dismissal is, of course, without prejudice to Rainbow's right to bring any matter to the attention of the full Commission pursuant to 47 CFR § 1.115, something Rainbow had augered in any event in its prior Petition For Reconsideration at 1. (Indeed, Fox also has matters regarding our *Decision* it wishes to bring to the attention of the full Commission, and has already filed with it an Application For Review on April 9, 1993.)

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 93-124

In the Matter of

Treatment of Operator Services
Under Price Cap Regulation

NOTICE OF PROPOSED RULEMAKING

Adopted: April 23, 1993; Released: May 26, 1993

Comment Date: July 6, 1993
Reply Comment Date: July 21, 1993

By the Commission:

I. INTRODUCTION

1. By this Notice, the Commission proposes to establish a new category in the basket for traffic sensitive switched interstate access elements (Traffic Sensitive Basket) to include the rates set by local exchange carriers (LECs) for operator services.[1] Rates included in this new category would be subject to banding constraints identical to those used to constrain annual price changes in other traffic sensitive service categories. Aggregate rates in the category could move up or down 5 percent per year adjusted for changes in the price cap index for the basket. We tentatively conclude that the creation of a separate category for operator services is necessary to ensure that price cap companies do not have unlimited ability to change prices for these services in relation to other traffic sensitive or interexchange rates.

II. BACKGROUND

2. Over the past few years, the Commission's Common Carrier Bureau (Bureau) has granted various LEC requests for waiver of Part 69 of the Commission's Rules, 47 C.F.R. Part 69,[2] to establish access elements to recover the costs of providing operator services.[3] In its Order addressing the waiver petition filed by the Ameritech Operating Companies (Ameritech), the Bureau ultimately required LECs to create a separate access element for operator services and to allocate all costs of these services to that element.[4] Recognizing that other LECs would likely seek similar waivers, the Bureau also in the *Ameritech Order* granted a blanket waiver of Part 69 to enable other LECs to offer operator services without seeking individual waivers.[5]

3. Under price caps, operator services are considered to be "new" services at the time they are introduced.[6] Although temporarily held outside price cap baskets and service categories, new services are eventually incorporated into a basket and category. As a general rule, the Part 69 rules determine the basket and category classification, but the current Part 69 rules do not describe an operator service element or elements. Several LECs have established such elements pursuant to Part 69 waivers.[7]

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[1] LECs generally provide two types of interstate operator services -- operator transfer service and line status verification. Operator transfer service is provided when a LEC operator receives a "O-" call from a party seeking to place an interLATA call and transfers that call directly to the interexchange carrier (IXC) selected by that party. Line status verification service is provided when a LEC operator checks, on behalf of an IXC operator, whether a particular access line is either "busy" or out-of-service. The LEC operator, after determining that a line is "busy," may also interrupt the line for emergency purposes.

[2] Section 69.4(b) of the Commission's Rules, 47 C.F.R. § 69.4(b), describes the access service elements established by the Commission. Sections 69.306(b) and 69.404 of the Rules, 47 C.F.R. §§ 69.306 (b), 69.404, require that costs associated with operator services be allocated to the interexchange category of Part 69.

[3] *See e.g.*, Bell Atlantic Telephone Companies, Petition for Waiver, 4 FCC Rcd 455 (Com.Car.Bur. 1988); New York Telephone and New England Telephone Companies, Petition for Waiver, 4 FCC Rcd 1391 (Com.Car.Bur. 1989), *see also*, New York Telephone and New England Telephone Companies, Petition for Waiver, 6 FCC Rcd 1588 (Com.Car.Bur. 1991); Illinois Consolidated Telephone Petition for Waiver, 5 FCC Rcd 3246 (Com.Car.Bur. 1990); and Southwestern Bell Telephone Companies, Petition for Waiver, 5 FCC Rcd 3452 (Com.Car.Bur. 1990).

[4] Ameritech Operating Companies, Petition for Waiver of Section 69.4(b) of the Commission's Rules, Transmittal Nos. 425 and 467, Memorandum Opinion and Order, 6 FCC Rcd 1541 (Com.Car.Bur. 1991) (*Ameritech Order*).

[5] *See* note 4, *supra*. The Bureau imposed two conditions on the blanket waiver granted in the *Ameritech Order:* (a) the LEC must create separate Part 69 rate elements for these new services (*i.e.*, it cannot simply make them sub-elements of a current access element); and (b) the LECs must allocate all costs associated with the provision of those new services to these Operator Services access elements. *See Ameritech Order*, 6 FCC Rcd at 1542.

[6] The Commission adopted price cap regulation for certain LECs on September 19, 1990. *See* Second Report and Order, 5 FCC Rcd 6786 (1990) and Erratum, 5 FCC Rcd 7664 (1990) (*LEC Price Cap Order*), *modified on recon.* 6 FCC Rcd 2637 (1991), *petitions for recon. of ONA Part 69 Order pending, petitions for further recon. dismissed*, 6 FCC Rcd 7482 (1991), *aff'd National Rural Telecom Ass'n v. FCC*, No. 91-1300, (D.C. Cir. March 26, 1993), *further modified on recon.* 6 FCC Rcd 4524 (1991) (*ONA Part 69 Order*), *petitions for recon. of ONA Part 69 Order pending*. Regarding the treatment of new services under price cap regulation, *see LEC Price Cap Order*, 5 FCC Rcd at 6824-6825 (paras. 312-321).

[7] These LECs include the New York Telephone Company and the New England Telephone Company (NYNEX), the BellSouth Telephone Companies, Ameritech, Pacific Bell, the GTE System Telephone Companies, Southwestern Bell Telephone Company, and the Bell Atlantic Telephone Companies. Illinois Consolidated, which is not subject to price cap regulation, also provides such operator services.

III. PROPOSED RULES

4. We propose to amend Part 61 of our Rules to establish a new "Operator Services" category in the Traffic Sensitive Basket for LECs subject to price cap regulation. We believe that placement of these services in a newly-created category within the Traffic Sensitive Basket is necessary to ensure that price cap companies do not have unlimited ability to change prices for these services in relation to other traffic sensitive or interexchange rates. We also propose to apply banding limitations on this new service category identical to those used for the other traffic sensitive categories, *e.g.*, plus or minus 5 percent per year adjusted for changes in the basket's price cap index. Use of a separate category, coupled with banding limitations, will ensure that operator services customers as a whole will not experience large price increases or decreases in a given year, while at the same time providing LECs with the flexibility they may need to adjust prices in an incremental manner.

5. We seek comment on this proposal, and invite parties to submit alternative proposals.

IV. REGULATORY FLEXIBILITY ACT

6. Because of the nature of local exchange and access service, this Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983). Thus, this Commission is not required by the terms of the Act to apply the formal procedures set forth therein. We are nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with our other public interest responsibilities. Accordingly, we will, on an informal basis as appropriate, analyze the effect of these proposed regulations on small telephone companies.

V. EX PARTE REQUIREMENTS

7. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

VI. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed changes in the basket established under price cap regulation for traffic sensitive switched interstate access services. COMMENT IS INVITED on these proposals.[8]

9. Accordingly, IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, comments SHALL BE FILED with the Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before **July 6, 1993.** Reply comments SHALL BE FILED as indicated above on or before **July 21, 1993.** To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting documents. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties should file two copies of any such pleadings with the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with International Transcription Service, the Commission's duplicating contractor, at its office in Suite 140, 2100 M Street, N.W., Washington, D.C. 20037.

10. IT IS FURTHER ORDERED that the Secretary shall cause a summary of this Notice of Proposed Rulemaking to appear in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[8] These actions are taken pursuant to Sections 1, 4(i) and (j), 201-205, 218, 220, and 403 of the Communications Act as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201-205, 218, 220, and 403.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

Stella A. Pappas File No. 50086-CM-MP-87

For an Extension of Time to Construct
Multichannel Multipoint Distribution
Service station WHT764 on the F-group
channels at Des Moines, Iowa

ORDER ON RECONSIDERATION

Adopted: May 18, 1993; Released: May 26, 1993

By the Chief, Domestic Facilities Division:

1. *Introduction.* Stella A. Pappas (Pappas) filed a petition for reconsideration of the denial by the Domestic Facilities Division (Division) on delegated authority of her application for extension of construction authorization for the Multichannel Multipoint Distribution Service (MMDS) station WHT764 on the F-group channels at Des Moines, Iowa. Pappas also requested reinstatement of her construction authorization.

2. *Background.* On reconsideration, Pappas argues that her extension application should have been granted because she was unable to locate an assignee prior to the expiration of her construction period. Pappas also asserts that Division staff should have known Pappas never intended to construct the Des Moines MMDS station because, prior to grant of the construction authorization, Pappas' spouse filed an amendment in a comparative hearing proceeding for a broadcast television station at Omaha, Nebraska, stating that if she was granted a construction authorization for the Des Moines MMDS station, she would sell it. In addition, Pappas states that *Microband Corp. of America*, 50 Rad. Reg. 2d 233 (Comm. Car. Bur. 1981)(hereinafter cited as *Microband)*, supports her position that she was entitled to an extension of time to locate an assignee. In the alternative, Pappas argues that, if her construction authorization is not reinstated for the purpose of locating an assignee, it should be reinstated and a six month extension of time granted because she would then be willing to construct the station.

3. *Discussion.* Section 319(b) of the Communications Act of 1934, as amended, "provides that a construction authorization will be automatically forfeited if the station is not ready for operation within the time specified in the construction authorization, or such further time as the Commission may allow, unless prevented by causes not under the control of the grantee." *Miami MDS Co. and Boston MDS Co.*, 7 FCC Rcd 4347, 4348 (1992). Pappas' construction authorization expiration date appeared on its face. The authorization also contained the following express provision: "This permit shall be automatically forfeited if the facilities authorized herein are not ready for operation within the term of this permit...." At the time, this automatic forfeiture provision was specifically embodied in Section 21.44 of the Commission's Rules.[1] *Vidcom Marketing, Inc.*, 6 FCC Rcd 1945, 1946 n.3 (Dom. Fac. Div. 1991).

4. We are not persuaded that the denial of Pappas' extension application was inappropriate. "Carriers who fail promptly to construct facilities preclude other applicants who are willing, ready, and able to construct from access to limited and valuable spectrum. This has the effect of delaying, or even denying, service to the public. *Revision of Part 21 of the Commission's Rules*, 2 FCC Rcd 5713 (1987)." *Miami MDS Co. and Boston MDS Co.*, 7 FCC Rcd 4347, 4349 (1992). Pappas' delay in construction appears to be an exercise of independent business judgment. Thus, Pappas' failure to construct is attributable to circumstances within her control. In general, extensions are not granted for circumstances within the control of the authorization holder. Therefore, Pappas failed to justify an extension of time to construct an MMDS station. *See W. Lee Simmons, Inc.*, 2 FCC Rcd 4290 (1987) (extension applicant's business decision not to construct was within its own control); *Joe L. Smith, Jr., Inc.*, 5 Rad Reg. 2d 582 (1965); *accord Radio Longview, Inc.*, 19 FCC 2d 966, 968-71 (1969); *Beta Television Corp.*, 27 FCC 2d 761, 763 (Rev. Bd. 1970).

5. More specifically, extensions are not granted for the purpose of finding an assignee. *Jackson Television Corp.*, 23 FCC 2d 321 (1970). Even if Pappas hoped to merely recoup her expenses, recoupment of expenses fails to justify an extension. *Continental Summit Television Corp.*, 27 FCC 2d 945, 948-49 (Rev. Bd. 1971). "[T]he extension of a construction permit for the sole purpose of keeping it alive while protracted negotiations are conducted with prospective assignees or transferees is contrary to our responsibilities under the [Communications] Act." *Telemusic Co.*, 4 FCC 2d 221, 223 (1966); *see also San Miguel Cable Systems, Inc.*, Mimeo No. 3525 (Dom. Fac. Div. April 2, 1986). In addition, approximately six months prior to the grant of the Pappas construction authorization, the Commission specifically stated: "[W]e take this opportunity to set out a few examples of what would *not* constitute a valid justification for additional construction time. ... [E]xtensions will not be granted for the mere purpose of finding an assignee for the license...." *Notice of Proposed Rulemaking, Revision of Part 21 of the Commission's Rules*, 104 FCC 2d 116, 123-24 (1986). Pappas was issued a construction authorization for the maximum amount of construction time allowed by 47 C.F.R. Sec. 21.43. Her inability to locate an assignee during this construction period does not justify the grant of an extension of time to construct the station.

6. Pappas' intent to sell the construction authorization, instead of constructing the MMDS station, does not render the extension application denial improper. To the extent Pappas is arguing that the extension application should have been granted because her spouse filed an amendment

[1] Section 21.44(a) stated *inter alia* as follows: "A construction [authorization] shall be automatically forfeited if the station is not ready for operation within the term of the construction" authorization.

of a broadcast television station application stating that Pappas was no longer willing to construct the Des Moines MMDS station, we note that the amendment of a broadcast television station application is not the amendment of an MMDS application. Under 47 C.F.R. Secs. 1.65 and 21.13(a)(5), Pappas was required to up date her Des Moines MMDS application. She failed to do so. Pappas has presented no persuasive argument for reconsideration of our decision to deny her extension application.

7. Pappas' reliance on *Microband* is misplaced. As Pappas correctly notes in her petition, in that case the extension was *not* requested for the purpose of assignment of the construction permit. The Common Carrier Bureau *denied* the extension application at issue in *Microband*. The decision was silent as to whether extensions of time should be granted for the purpose of assignment. Therefore, this decision does not support Pappas' argument that she was entitled to grant of her extension application for the purpose of locating an assignee.

8. *Conclusion and Ordering Clause*. Having carefully considered all of the arguments and evidence presented, we find that the denial of the Pappas extension application was proper, reconsideration is not justified, and reinstatement of the authorization is not warranted. Accordingly, IT IS ORDERED that the reconsideration petition filed by Stella A. Pappas regarding the above-referenced extension application and the request for reinstatement of the above-referenced MMDS authorization IS DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

EAST NEWTON CO. R-VI File No. BPLIF-910204DA
Carthage, MO

CARL JUNCTION R-1 SCHOOL DISTRICT File No. BPLIF-910415DF
Joplin, MO

For Construction Permit and License
in the Instructional Television Fixed
Service on Channels B1, B2, B3, and B4

MEMORANDUM OPINION AND ORDER

Adopted: May 18, 1993; Released: May 26, 1993

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of East Newton Co. R-VI (Newton) and Carl Junction R-1 School District (School), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels B1-B4 in Carthage and Joplin, MO, respectively.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of Newton and School. Both are qualified to be ITFS licensees. Although the applicants propose to serve schools outside their jurisdictions, because they also propose to serve schools within their own jurisdictions, they qualify as local applicants. Both are accredited school districts. Newton is accredited by the Missouri Department of Elementary and Secondary Education and School is accredited by the North Central Association of Secondary Schools.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive ITFS applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been established. *Instructional Television Fixed Service - Second Report and Order in MM Docket 83-523 (Second Report and Order)*, 101 F.C.C. 2d 49, 65-72 (1985); 47 C.F.R. §74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, Newton and School are awarded points based on the following criteria:

Localism. Each applicant is entitled to four points for being local. Each is serving the formal educational needs of schools within its respective jurisdiction.

Accreditation. Each applicant is entitled to three points for accreditation. Newton is accredited by the Missouri Department of Elementary and Secondary Education and School is accredited by the North Central Association of Secondary Schools.

Four-Channel Limitation. Neither applicant is the licensee of, or has filed applications for, additional ITFS channels in its proposed service area. Therefore, each is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid". Where the amounts and types of programming proposed in the schedule and in the grid are inconsistent, we shall consider as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits that level of programming to be transmitted. *Hispanic Information and Telecommunications Network, Inc.*, 7 FCC Rcd 5924 (1992). Newton's illustrative schedule proposes an average of 24.375 hours of ITFS programming per channel per week.[3]

[1] A "local" applicant is an institution or organization that is physically located in the community, or metropolitan area, where service is proposed. *Second Report and Order*, 101 F.C.C. 2d at 59; 47 C.F.R. §74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of total ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. §74.913(b)(4).

[3] Newton amended its application on December 28, 1992, after the "B" cut-off date of June 27, 1991, to "clarify" the information submitted in its initial program grid. If considered, the amendment would upgrade Newton's comparative position. However, an applicant's comparative position cannot be

However, the schedule does not indicate which programs are formal educational, as required by Section IV, Question 5 of the application. Accordingly, we will consider this programming as nonformal for the purpose of determining merit points. *Valley View Independent School District*, 7 FCC Rcd 7228 (1992). In contrast, Newton's programming grid proposes an average of 4 hours of formal educational programming per channel per week. Because neither the schedule nor the grid establishes the threshold amount at which merit points are awarded, Newton is entitled to no programming merit points.

School's illustrative schedule indicates an average of 40 hours of formal educational programming and 27.375 hours of other programming per channel per week, and its programming grid indicates the same. Thus, School is deemed to have proposed an average of 67.375 hours of programming per channel per week, where at least 21 of those hours are formal educational programming, and is entitled to two programming merit points.

E- and F- Channel Group Relocation. Neither Newton nor School is the current licensee of an E or F channel seeking to relocate to other channels. Consequently, neither applicant is entitled to the one point for such applicants.

Total. Newton is entitled to four points for being local, three points for being accredited, and two points for observing the four-channel limitation, for a total of nine points. School is entitled to four points for being local, three points for being accredited, two points for proposing at least 61 hours of ITFS programming per channel per week where at least 21 hours per channel per week are formal educational programming, and two points for observing the four-channel limitation, for a total of eleven points. Thus, the selectee is School.

OTHER MATTERS

5. No determination has been made that the tower heights of seven of the receive sites proposed by School would not each constitute a hazard to air navigation. Accordingly, any grant of a construction permit/license to School will be appropriately conditioned.

6. There are no petitions to deny School's application, and we find that grant of School's application would serve the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED, That the application (BPLIF-910204DA) filed by East Newton Co. R-VI IS DENIED and the application (BPLIF-910415DF) filed by Carl Junction R-1 School District IS GRANTED.

8. IT IS FURTHER ORDERED, That the authorization issued to Carl Junction R-1 School District shall be conditioned as follows:

> This authorization is subject to the condition that construction of the receive towers at receive site locations R1, R2, R9, R15, R47, R48, and R51 is prohibited until clearance is received from the Federal Aviation Adminstration, the Commission is so notified, and the appropriate painting and lighting specifications are determined.

9. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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enhanced by amendments filed after the "B" cut-off date and, therefore, this "clarifying" amendment will not be considered. See *Second Report and Order*, 101 F.C.C. 2d at 74.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

NEOSHO R-V — File No. BPLIF-910131DD
Carthage, MO

CARTHAGE R-9 SCHOOL DISTRICT — File No. BPLIF-910415DA
Joplin, MO

For Construction Permit and License
in the Instructional Television Fixed
Service on Channels C1, C2, C3, and C4

MEMORANDUM OPINION AND ORDER

Adopted: May 18, 1993; Released: May 26, 1993

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of Neosho R-V (Neosho) and Carthage R-9 School District (School), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels C1-C4 in Carthage and Joplin, MO, respectively.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of Neosho and School. Both are qualified to be ITFS licensees. Although the applicants propose to serve schools outside their jurisdictions, because they also propose to serve schools within their jurisdictions, they qualify as local applicants. Both are accredited school districts. Neosho is accredited by the Missouri Department of Elementary and Secondary Education and School is accredited by the North Central Association of Secondary Schools.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive ITFS applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been established. *Instructional Television Fixed Service - Second Report and Order in MM Docket 83-523 (Second Report and Order)*, 101 F.C.C. 2d 49, 65-72 (1985); 47 C.F.R. §74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, Neosho and School are awarded points based on the following criteria:

Localism. Each applicant is entitled to four points for being local. Neosho and School each is serving the formal educational needs of schools within its respective jurisdiction.

Accreditation. Each applicant is entitled to three points for accreditation. Neosho is accredited by the Missouri Department of Elementary and Secondary Education and School is accredited by the North Central Association of Secondary Schools.

Four-Channel Limitation. Neither applicant is the licensee of, or has filed applications for, additional ITFS channels in its proposed service area. Therefore, each is entitled to two points for remaining within the four channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid". Where the amounts and types of programming proposed in the schedule and in the grid are inconsistent, we shall consider as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits that level of programming to be transmitted. *Hispanic Information and Telecommunications Network, Inc.*, 7 FCC Rcd 5924 (1992). Neosho's illustrative schedule proposes an average of 24.375 hours of ITFS programming per channel per week.[3] However, the schedule does not indicate which programs are formal educational, as required by Section IV, Question 5 of the application. Accordingly, we will consider this programming as nonformal for the purpose of determining

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[1] A "local" applicant is an institution or organization that is physically located in the community, or metropolitan area, where service is proposed. *Second Report and Order*, 101 F.C.C. 2d at 59; 47 C.F.R. §74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of total ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. §74.913(b)(4).

[3] Neosho amended its application on December 28, 1992, after the "B" cut-off date of June 27, 1991, to "clarify" the information submitted in its initial program grid. If considered, the amendment would upgrade Neosho's comparative position.

merit points. *Valley View Independent School District*, 7 FCC Rcd 7228 (1992). In contrast, Neosho's programming grid proposes an average of 4 hours of formal educational programming per channel per week. Because neither the schedule nor the grid establishes the threshold amount at which merit points are awarded, Neosho is entitled to no programming merit points.

School's illustrative schedule indicates an average of 46.25 hours of formal educational programming per channel per week, and its programming grid indicates the same. Thus, School is deemed to have proposed an average of 46.25 hours of formal educational programming per channel per week, and is entitled to two programming merit points.

E- and F- Channel Group Relocation. Neither Neosho nor School is the current licensee of an E or F channel seeking to relocate to other channels. Consequently, neither applicant is entitled to the one point for such applicants.

Total. Neosho is entitled to four points for being local, three points for being accredited, and two points for observing the four-channel limitation, for a total of nine points. School is entitled to four points for being local, three points for being accredited, two points for proposing at least 41 hours of formal educational programming per channel per week, and two points for observing the four-channel limitation, for a total of eleven points. Thus, the selectee is School.

OTHER MATTERS

5. No determination has been made that the tower heights of seven of the receive sites proposed by School would not each constitute a hazard to air navigation. Accordingly, any grant of a construction permit/license to School will be appropriately conditioned.

6. There are no petitions to deny School's application, and we find that grant of School's application would serve the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED, That the application (BPLIF-910131DD) filed by Neosho R-V IS DENIED and the application (BPLIF-910415DA) filed by Carthage R-9 School District IS GRANTED.

8. IT IS FURTHER ORDERED, That the authorization issued to Carthage R-9 School District shall be conditioned as follows:

> This authorization is subject to the condition that construction of the receive towers at receive site locations R1, R2, R9, R15, R47, R48, and R51 is prohibited until clearance is received from the Federal Aviation Adminstration, the Commission is so notified, and the appropriate painting and lighting specifications are determined.

9. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

However, an applicant's comparative position cannot be enhanced by amendments filed after the "B" cut-off date and, therefore, this "clarifying" amendment will not be considered. See *Second Report and Order*, 101 F.C.C. 2d at 74.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

AVILLA R-XIII SCHOOL DISTRICT
Carthage, MO — File No. BPLIF-910131DB

LAMAR R-1 SCHOOL DISTRICT
Joplin, MO — File No. BPLIF-910415DE

For Construction Permit and License
in the Instructional Television Fixed
Service on Channels D1, D2, D3, and D4

MEMORANDUM OPINION AND ORDER

Adopted: May 18, 1993; Released: May 26, 1993

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of Avilla R-XIII (Avilla) and Lamar R-1 School District (School), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels D1-D4 in Carthage and Joplin, MO, respectively; and an informal objection against School, filed by MultiChannel Media, Inc., tentative selectee for a new MMDS station in Joplin, MO.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of Avilla and School. Both are qualified to be ITFS licensees. Although the applicants propose to serve schools outside their jurisdictions, because they also propose to serve schools within their jurisdictions, they qualify as local applicants. Both are school districts accredited by the Missouri Department of Elementary and Secondary Education.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive ITFS applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been established. *Instructional Television Fixed Service - Second Report and Order in MM Docket 83-523 (Second Report and Order)*, 101 F.C.C. 2d 49, 65-72 (1985); 47 C.F.R. §74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, Avilla and School are awarded points based on the following criteria:

Localism. Each applicant is entitled to four points for being local. Avilla and School each is serving the formal educational needs of schools within its respective jurisdiction.

Accreditation. Each applicant is accredited by the Missouri Department of Elementary and Secondary Education. Therefore, each is entitled to three points for accreditation.

Four-Channel Limitation. Neither applicant is the licensee of, or has filed applications for, additional ITFS channels in its proposed service area. Therefore, each is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid". Where the amounts and types of programming proposed in the schedule and in the grid are inconsistent, we shall consider as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits that level of programming to be transmitted. *Hispanic Information and Telecommunications Network, Inc.*, 7 FCC Rcd 5924 (1992). Avilla's illustrative schedule proposes an average of 24.375 hours of ITFS programming per channel per week.[3]

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[1] A "local" applicant is an institution or organization that is physically located in the community, or metropolitan area, where service is proposed. *Second Report and Order*, 101 F.C.C. 2d at 59; 47 C.F.R. §74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of total ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. §74.913(b)(4).

[3] Avilla amended its application on December 28, 1992, after the "B" cut-off date of June 27, 1991, to "clarify" the information submitted in its initial program grid. If considered, the amendment would upgrade Avilla's comparative position. However, an applicant's comparative position cannot be

However, the schedule does not indicate which programs are formal educational, as required by Section IV, Question 5 of the application. Accordingly, we will consider this programming as nonformal for the purpose of determining merit points. *Valley View Independent School District*, 7 FCC Rcd 7228 (1992). In contrast, Avilla's programming grid proposes an average of 4 hours of formal educational programming per channel per week. Because neither the schedule nor the grid establishes the threshold amount at which merit points are awarded, Avilla is entitled to no programming merit points.

School's illustrative schedule indicates an average of 43.125 hours of formal educational programming per channel per week, and its programming grid indicates the same. Thus, School is deemed to have proposed an average of 43.125 hours of formal educational programming per channel per week, and is entitled to two programming merit points.

E- and F- Channel Group Relocation. Neither Avilla nor School is the current licensee of an E or F channel seeking to relocate to other channels. Consequently, neither applicant is entitled to the one point for such applicants.

Total. Avilla is entitled to four points for being local, three points for being accredited, and two points for observing the four-channel limitation, for a total of nine points. School is entitled to four points for being local, three points for being accredited, two points for proposing at least 41 hours of formal educational ITFS programming per channel per week, and two points for observing the four-channel limitation, for a total of eleven points. Thus, the selectee is School.

OTHER MATTERS

5. On June 27, 1991, MultiChannel Media, Inc. (MCM) filed an informal objection to School's proposal pursuant to Section 73.3587 of the Commission's Rules (as incorporated for ITFS applicants in Section 74.910). MCM is the tentative selectee for a new multichannel Multipoint Distribution Service (MMDS) station on the F-Channel Group at Joplin, MO. MCM also has entered into agreement to lease excess capacity from National Wireless Video (National), tentative selectee for a license for a new MMDS station on the E-Channel Group at Joplin. MCM claims that operation of the ITFS station proposed by School will cause interference to the operation of MCM's and National's proposed facilities. School, in its response, indicates that it is aware of the potential interference problems and that, consistent with Commission's policy and practice, it is working with MCM and National to resolve them. Under these circumstances, we do not find MCM's objection to be a bar to the grant of School's application, which will be appropriately conditioned to forestall any objectionable interference.

6. No determination has been made that the tower heights of seven of the receive sites proposed by School would not each constitute a hazard to air navigation. Accordingly, any grant of a construction permit/license to School will be appropriately conditioned.

7. We find School to be fully qualified and concluded that grant of School's application would serve the public interest, convenience, and necessity.

8. Accordingly, IT IS ORDERED, That the informal objection filed by Multi-Channel Media, Inc. IS GRANTED to the extent indicated in paragraph 5.

9. IT IS FURTHER ORDERED, That the application (BPLIF-910131DB) filed by Avilla R-XIII School District IS DENIED and the application (BPLIF-910415DE) filed by Lamar R-1 School District IS GRANTED.

10. IT IS FURTHER ORDERED, That the authorization issued to Lamar R-1 School District shall be conditioned as follows:

> This authorization is subject to modification in the event the facilities specified herein cause interference to MMDS authorized services on adjacent channel frequencies in the Joplin, MO area. Permittee shall coordinate with such services to resolve any adjacent channel interference problems caused or received by this station.

11. IT IS FURTHER ORDERED, That the authorization issued to Lamar R-1 School District shall be conditioned as follows:

> This authorization is subject to the condition that construction of the receive towers at receive site locations R1, R2, R9, R15, R47, R48, and R51 is prohibited until clearance is received from the Federal Aviation Administration, the Commission is so notified, and the appropriate painting and lighting specifications are determined.

12. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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enhanced by amendments filed after the "B" cut-off date and, therefore, this "clarifying" amendment will not be considered. See *Second Report and Order*, 101 F.C.C. 2d at 74.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

MILLER R-II — File No. BPLIF-910131DC
Carthage, MO

MONETT R-1 SCHOOL DISTRICT — File No. BPLIF-910415DC
Joplin, MO

For Construction Permit and License in the Instructional Television Fixed Service on Channels G1, G2, G3, and G4

MEMORANDUM OPINION AND ORDER

Adopted: May 18, 1993; **Released: May 26, 1993**

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of Miller R-II (Miller) and Monett R-1 School District (School), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels G1-G4 in Carthage and Joplin, MO, respectively; and an informal objection against School, filed by MultiChannel Media, Inc., tentative selectee for a new MMDS station in Joplin, MO.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of Miller and School. Both are qualified to be ITFS licensees. Although the applicants propose to serve schools outside their jurisdictions, because they also propose to serve schools within their own jurisdictions, they qualify as local applicants. Both are accredited school districts. Miller is accredited by the Missouri Department of Elementary and Secondary Education and School is accredited by the North Central Association of Secondary Schools.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive ITFS applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been established. *Instructional Television Fixed Service - Second Report and Order in MM Docket 83-523 (Second Report and Order)*, 101 F.C.C. 2d 49, 65-72 (1985); 47 C.F.R. §74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, Miller and School are awarded points based on the following criteria:

Localism. Each applicant is entitled to four points for being local. Miller and School each is serving the formal educational needs of schools within its respective jurisdiction.

Accreditation. Each applicant is entitled to three points for accreditation. Miller is accredited by the Missouri Department of Elementary and Secondary Education and School is accredited by the North Central Association of Secondary Schools.

Four-Channel Limitation. Neither applicant is the licensee of, or has filed applications for, additional ITFS channels in its proposed service area. Therefore, each is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid". Where the amounts and types of programming proposed in the schedule and in the grid are inconsistent, we shall consider as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits that level of programming to be transmitted. *Hispanic Information and Telecommunications Network, Inc.*, 7 FCC Rcd 5924 (1992). Miller's illustrative schedule proposes an average of 24.375 hours of ITFS programming per channel per week.[3]

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[1] A "local" applicant is an institution or organization that is physically located in the community, or metropolitan area, where service is proposed. *Second Report and Order*, 101 F.C.C. 2d at 59; 47 C.F.R. §74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of total ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. §74.913(b)(4).

[3] Miller amended its application on December 28, 1992, after the "B" cut-off date of June 27, 1991, to "clarify" the information submitted in its initial program grid. If considered, the amendment would upgrade Miller's comparative position.

However, the schedule does not indicate which programs are formal educational, as required by Section IV, Question 5 of the application. Accordingly, we will consider this programming as nonformal for the purpose of determining merit points. *Valley View Independent School District*, 7 FCC Rcd 7228 (1992). In contrast, Miller's programming grid proposes an average of 4 hours of formal educational programming per channel per week. Because neither the schedule nor the grid establishes the threshold amount at which merit points are awarded, Miller is entitled to no programming merit points.

School's illustrative schedule indicates an average of 51.25 hours of formal educational programming per channel per week, and its programming grid indicates the same. Thus, School is deemed to have proposed an average of 51.25 hours of formal educational programming per channel per week, and is entitled to two programming merit points.

E- and F- Channel Group Relocation. Neither Miller nor School is the current licensee of an E or F channel seeking to relocate to other channels. Consequently, neither applicant is entitled to the one point for such applicants.

Total. Miller is entitled to four points for being local, three points for being accredited, and two points for observing the four-channel limitation, for a total of nine points. School is entitled to four points for being local, three points for being accredited, two points for proposing at least 41 hours of formal educational ITFS programming per channel per week, and two points for observing the four-channel limitation, for a total of eleven points. Thus, the selectee is School.

OTHER MATTERS

5. On June 27, 1991, MultiChannel Media, Inc. (MCM) filed an informal objection to School's proposal pursuant to Section 73.3587 of the Commission's Rules (as incorporated for ITFS applicants in Section 74.910). MCM is the tentative selectee for a new multichannel Multipoint Distribution Service (MMDS) station on the F-Channel Group at Joplin, MO. MCM also has entered into agreement to lease excess capacity from National Wireless Video (National), tentative selectee for a license for a new MMDS station on the E-Channel Group at Joplin. MCM claims that operation of the ITFS station proposed by School will cause interference to the operation of MCM's and National's proposed facilities. School, in its response, indicates that it is aware of the potential interference problems and that, consistent with Commission policy and practice, it is working with MCM and National to resolve them. Under these circumstances, we do not find MCM's objection to be a bar to the grant of School's application, which will be appropriately conditioned to forestall any objectionable interference.

6. No determination has been made that the tower heights of seven of the receive sites proposed by School would not each constitute a hazard to air navigation. Accordingly, any grant of a construction permit/license to School will be appropriately conditioned.

7. We find School to be fully qualified and conclude that grant of School's application would serve the public interest, convenience, and necessity.

8. Accordingly, IT IS ORDERED, That the informal objection filed by MultiChannel Media, Inc. IS GRANTED to the extent indicated in paragraph 5.

9. IT IS FURTHER ORDERED, That the application (BPLIF-910131DC) filed by Miller R-II School District IS DENIED and the application (BPLIF-910415DC) filed by Monett R-1 School District IS GRANTED.

10. IT IS FURTHER ORDERED, That the authorization issued to Lamar R-1 School District shall be conditioned as follows:

> This authorization is subject to modification in the event the facilities specified herein cause interference to MMDS authorized services on adjacent channel frequencies in the Joplin, MO area. Permittee shall coordinate with such services to resolve any adjacent channel interference problems caused or received by this station.

11. IT IS FURTHER ORDERED, That the authorization issued to Monett R-1 School District shall be conditioned as follows:

> This authorization is subject to the condition that construction of the receive towers at receive site locations R1, R2, R9, R15, R47, R48, and R51 is prohibited until clearance is received from the Federal Aviation Administration, the Commission is so notified, and the appropriate painting and lighting specifications are determined.

12. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

However, an applicant's comparative position cannot be enhanced by amendments filed after the "B" cut-off date and, therefore, this "clarifying" amendment will not be considered. See *Second Report and Order*, 101 F.C.C. 2d at 74.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-306

In the Matter of

Request by Press Broadcasting Company, Inc. to Amend Section 76.51 of the Commission's Rules to Include Clermont, Florida, in the Orlando-Daytona Beach-Melbourne-Cocoa, Florida, Television Market — RM-7994

REPORT & ORDER
(Proceeding Terminated)

Adopted: May 18, 1993; Released: May 19, 1993

By the Chief, Mass Media Bureau:

1. Before the Commission is the *Notice of Proposed Rule Making* (*"NPRM"*), 8 FCC Rcd 94 (1992), issued in response to a petition filed on behalf of Press Broadcasting Company, Inc. ("Press" or "petitioner"), licensee of WKCF(TV), Channel 68 (Independent), Clermont, Florida, seeking to amend Section 76.51 of the Commission's Rules, 47 C.F.R. §76.51, to change the designation of the Orlando-Daytona Beach-Melbourne-Cocoa, Florida, television market to include the community of Clermont, Florida. The petitioner filed comments in support of the proposal.[1] No comments opposing the proposal were received.

2. In the *NPRM*, we tentatively concluded that, based on the facts presented by the petitioner, a sufficient case for market hyphenation had been set forth and that Section 76.51 of the Commission's Rules should be amended by adding Clermont to the Orlando-Daytona Beach-Melbourne-Cocoa, Florida, market designation. For the reasons stated in the *NPRM*, as supported generally by the comments filed in response thereto, we believe that the public interest would be served by amendment of our rules as proposed by Press.

3. More specifically, the information presented to us indicates that WKCF and the stations in the presently designated market have coverage areas that substantially overlap and that the stations do, in fact, compete for audiences throughout the market area, thus establishing their economic interdependence. As we observed in the *NPRM*, although the communities involved are not directly adjacent, the location of WKCF's transmitting antenna on the same broadcast tower used by a Daytona Beach station supports treating the two stations as part of the same television market. In addition, Arbitron's conclusion that Clermont is within the Orlando-Daytona Beach-Melbourne "area of dominant influence" also supports this conclusion. The conditions present in this individual television market establish sufficient competitive commonality such that the proposed market redesignation appropriately delineates the areas where market-area stations can and do, both actually and logically, compete. We therefore conclude that redesignation of the market as proposed is consistent with the underlying purposes of the market hyphenation rule to "equalize competition" among stations in genuine competition. *See, e.g., Major Television Markets (Fresno-Visalia, Calif.)*, 57 RR 2d 1122 (1985).

4. Accordingly, pursuant to delegated authority,[2] IT IS ORDERED that, effective thirty (30) days after publication in the Federal Register, Section 76.51(b) of the Commission's Rules, Major Television Markets, IS AMENDED to include Clermont, Florida, as follows:

Orlando-Daytona Beach-Melbourne-Cocoa-Clermont, Florida.

5. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

6. For further information, contact Alan E. Aronowitz, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

[1] Sharp Communications, Inc. ("Sharp"), licensee of WACX(TV), Channel 55 (Independent), Leesburg-Orlando, Florida, filed comments supporting Press' proposal, but also proposes that the Commission expand the instant proceeding to include the community of Leesburg, Florida as part of the same television market. Sharp maintains that although the *NPRM* did not specifically refer to the possible inclusion of Leesburg in the market, the *NPRM* "reasonably inferred" that stations meeting certain criteria would appear to be eligible for inclusion in the market under consideration herein. However, because the *NPRM* in this docket only sought public comment on Press' specific proposal to add Clermont to the subject market, we will not consider Sharp's proposal regarding Leesburg at this time. Of course, Sharp is free to refile, and the Commission will then independently proceed, including, if appropriate, soliciting public comment on Sharp's particular proposal.

[2] *See Report & Order* in MM Docket No. 92-259, FCC 93-144, n.150 (released March 29, 1993).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-132

In the Matter of

Competition in the Interstate
Interexchange Marketplace

SECOND REPORT AND ORDER

Adopted: May 13, 1993; Released: May 14, 1993

By the Commission:

I. INTRODUCTION

1. In the *Interexchange Order*, we stated our intent to implement on our own motion, or by petition, further streamlined regulation of AT&T's 800 services when 800 numbers became portable.[1] With number portability scheduled to become generally available on May 1, 1993, AT&T filed a petition on February 17, 1993, to modify Part 61 of the Commission's rules to eliminate price cap regulation and apply streamlined regulation to AT&T's Basket 2 services. Consistent with our prior intent, we now grant in substantial part AT&T's petition by replacing price cap regulation with further streamlined regulation for all of AT&T's Basket 2 services, except for 800 Directory Assistance (DA).

II. BACKGROUND

A. 800 Services Market

2. In the *Interexchange Proceeding*, we undertook an examination of A" the state of competition in the interstate interexchange marketplace.[2] We tentatively concluded that competition had increased sufficiently to allow a gradual lifting of many of the regulatory constraints binding AT&T's provision of interstate long distance services, and we proposed to streamline our regulations accordingly to the maximum extent possible.[3] With respect to AT&T's provision of 800 services specifically, we sought comment on our proposal to extend maximum streamlined regulation to AT&T's 800 services if and when 800 numbers became portable.[4]

3. In the *Interexchange Order*, we found that there was substantial competition in the provision of most business services and adopted a series of reforms designed to reduce regulatory restrictions on AT&T's provision of most business services.[5] We excluded from these regulatory reforms AT&T's provision of 800 services and other inbound services.[6]

4. We concluded that although 800 and inbound services are, in many respects, like other business services, AT&T maintained a market advantage in the provision of 800 services because of the lack of 800 number portability under existing local exchange network technology.[7] In light of this advantage and in order to protect AT&T's 800 service customers from the possibility of unlawfully high rates, we retained price cap regulation of these services.[8] In addition, to prevent AT&T from leveraging its market power in 800 and inbound services into other areas, we restricted AT&T's ability to bundle 800 and inbound services with other services until 800 numbers are portable.[9] We noted, however, that no party had identified any other significant barriers to 800 services competition and that we intended to implement further streamlined regulation when 800 number portability became generally available.[10]

5. In restricting AT&T's ability to bundle 800 and inbound services with other services, we recognized that to invalidate all existing bundling packages would create significant disruption in the marketplace.[11] To avoid such disruption, we "grandfathered" existing bundled arrangements.[12] However, we required AT&T to allow grandfathered customers to terminate their bundled service arrangements within 90 days of the time 800 numbers became portable without the imposition of any termination liabilities. This latter requirement is termed "fresh look."[13]

B. 800 Data Base Access

6. 800 numbers became portable on May 1, 1993 with the implementation of a "data base" system of 800 access.[14] Local exchange carriers (LECs) implement this data base system by linking their common channel signaling system

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[1] Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880, 5905 n.233 (1991) (*Interexchange Order*), *recon.*, 6 FCC Rcd 7569 (1991) (*Sua Sponte Reconsideration Order*), *further recon.*, 7 FCC Rcd 2677 (1992) (*Further Reconsideration Order*), *pets. for recon. pending; see* Competition in the Interstate Interexchange Marketplace, Memorandum Opinion and Order on Reconsideration, CC Docket No. 90-132, FCC 93-170 (released April 15, 1993).

[2] *See* Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rulemaking, 5 FCC Rcd 2627 (1990) (*Interexchange NPRM*).

[3] *Id.* at 2628.

[4] *Id.* at 2641. The term "800 services" refers to Price Cap Basket 2 offerings by AT&T that permit subscribers to agree in advance to pay for all calls made to them using a predesignated "800" number. *See generally*, 47 C.F.R. § 61.42(b)(2). The term "inbound service" refers to any other services or capabilities using an 800 number.

[5] *Interexchange Order*, 6 FCC Rcd at 5880-82, 5893-94.

[6] *Id.* at 5903-06.

[7] *Id.* at 5904.

[8] *Id.* at 5905.

[9] *Id.* at 5906.

[10] *Id.* at 5905 & n.233.

[11] *Id.* at 5906.

[12] *Id. See Sua Sponte Reconsideration Order*, 6 FCC Rcd at 7569 (revising the grandfathering date from Aug. 1, 1991 to Sept. 1, 1991).

[13] *Interexchange Order*, 6 FCC Rcd at 5906.

[14] *See* Provision of Access for 800 Service, Report and Order, 4 FCC Rcd 2824 (1989) (*800 Order*), *recon.*, 6 FCC Rcd 5421, 5425 (1991) (*800 Reconsideration Order*), *further recon.*, 8 FCC Rcd 1038 (1993), Second Report and Order, 8 FCC Rcd 907 (1993);

networks with data bases containing service information associated with each 800 number, including the interexchange carrier (IXC) selected by the 800 subscriber to carry that call. LEC data bases are populated with data received from a central data base known as the Service Management System (SMS).[15] All 800 service records are initially loaded into the SMS. These records are then downloaded to the various LEC data bases around the country.

7. Only one entity, known as the "responsible organization" or RESPORG, may interface with the SMS for the purpose of inputting a new 800 customer service record or making changes to an existing record.[16] Initially, the carrier providing service for a particular record will be the RESPORG for that record. A customer may, however, change RESPORGs at any time. We have held that any entity may serve as a RESPORG, provided that the entity meets tariffed RESPORG eligibility criteria.[17]

III. AT&T's PETITION

8. AT&T asks the Commission to modify Part 61 of the Commission's rules to eliminate price cap regulation and apply streamlined regulation to AT&T's Basket 2 services as of the date number portability for 800 services becomes available.[18] In support of its petition, AT&T argues that the Commission has already streamlined most of AT&T's business services and that with the implementation of number portability, streamlined regulation should be extended to AT&T's 800 services.[19] AT&T also argues that the Commission committed to streamlining AT&T's 800 services when number portability is generally available.[20]

IV. DISCUSSION

9. Parties opposing AT&T's petition generally argue that number portability will not automatically render the 800 services market fully competitive.[21] They argue that AT&T will retain substantial advantages over its competitors even after number portability is introduced because of: customers' unwillingness to change IXCs until they are sure of the reliability of the 800 data base system and until automated notice and acceptance procedures are implemented; AT&T's status as incumbent RESPORG for the vast majority of 800 service records; AT&T's ability to benefit from pre-portability service arrangements; AT&T's control over 800 DA; the Weber patent; and the cost of changing carriers even after the advent of number portability.[22]

10. We conclude that with the implementation of 800 number portability, AT&T's 800 services are now subject to substantial competition. Accordingly, we find that further streamlined regulation of AT&T's 800 services is in the public interest.[23] In the *Interexchange Order*, we undertook a comprehensive analysis of the state of competition in the long distance market generally, and in the 800 services market specifically. We found that the 800 services market was not substantially competitive because of the lack of 800 number portability. At the same time, however, we determined that no party had identified any other significant barriers to 800 services competition, and stated our intent to implement further streamlined regulation for AT&T's 800 services when 800 number portability became generally available. With 800 number portability now in effect, we conclude that, consistent with the *Interexchange*

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see Provision of Access for 800 Service, Order, 7 FCC Rcd 8616 (1992) (*Extension Order)* (extending the number portability implementation date from March 4, 1993 to May 1, 1993).

[15] The National Administration and Service Center (NASC) administers the 800 SMS. Currently, Bellcore is the administrator of the NASC although plans are under way to replace Bellcore as administrator.

[16] Because each 800 number will have its own record, a customer may select a different RESPORG for each 800 number it uses.

[17] Provision of Access for 800 Services, Order, 8 FCC Rcd 1423, 1428-29 (1993) (*CompTel Order).*

[18] Petition of AT&T to Modify Part 61 of the Commission's Rules (filed Feb. 17, 1993) (AT&T Petition).

[19] AT&T Petition at 1-2.

[20] AT&T Petition at 2. Public comment was solicited on AT&T's petition. *See* Public Notice, CC Docket No. 90-132, DA 93-212 (Feb. 23, 1993). Oppositions to AT&T's petition were filed by the Competitive Telecommunications Association (CompTel), WilTel, Inc. (WilTel), Sprint Communications Company LP (Sprint), and MCI Telecommunications Corporation (MCI). Reply Comments were filed by AT&T and Sprint. Although AT&T does not expressly ask for permission to include 800 service in its contract-based tariffs, current rules permit AT&T to include services subject to further streamlining in those tariffs. Thus, absent a change in the rules governing contract-based tariffs, AT&T effectively asks as well for permission to provide 800 and inbound services through contract-based tariffs.

[21] WilTel Opposition at 4; CompTel Opposition at 1-3 & n.5; Sprint Opposition at 1-11; MCI Opposition at 1-3.

[22] *See* CompTel Opposition at 1-5; WilTel Opposition at 2-4; Sprint Opposition at 3, 5-6, 8-11; Sprint Reply Comments at 1-2; MCI Opposition at 2-3, and Attachment. The Weber patent is an AT&T owned pre-divestiture patent relating to 800 data base routing and translation capabilities (*i.e.*, the "Data Base Communication Call Processing Method").

[23] On June 11, 1992, Sprint filed a petition requesting that we clarify that the 800 bundling restrictions imposed on AT&T would not automatically expire with the advent of number portability. Sprint argues that the *Interexchange Order* and the *Further Reconsideration Order* are inconsistent in that one indicates that a factual finding is necessary before the bundling restrictions would be removed, while the other suggests an automatic lifting of the bundling restrictions on the date number portability is generally available. Sprint Petition at 1-3. Sprint asks that we monitor developments in the 800 services marketplace and retain the bundling restrictions until we have concluded that impediments to competition in that market have been adequately addressed. *Id.* MCI supports Sprint's petition; the Custom Network Services Users Group opposes it. We now deny Sprint's petition. Contrary to Sprint's assertion, we see no inconsistency between the *Interexchange Order* and the *Further Reconsideration Order*. Both orders clearly state that the 800 bundling restrictions expire with the general availability of number portability. *See Interexchange Order*, 6 FCC Rcd at 5905-06; *Further Reconsideration Order*, 7 FCC Rcd at 2680 n.40. The language in the *Interexchange Order* referencing further Commission action applies only to further streamlining. *See Interexchange Order*, 6 FCC Rcd at 5905 n.233. Therefore, the bundling restrictions automatically expired on May 1, 1993, when 800 numbers became portable.

Order, AT&T 800 services should be subject to further streamlining.[24] None of the arguments advanced by opponents of AT&T's petition convinces us otherwise.[25]

11. CompTel and Sprint argue that many customers have concerns about the reliability of the 800 data base system and thus will be reluctant to change IXCs, at least during the early days of 800 data base service.[26] Commission staff, however, has been closely monitoring the progress of 800 data base implementation to ensure that the necessary work is completed in a timely fashion. Our monitoring efforts have included monthly meetings attended by representatives of many of the largest 800 users. As a result of these meetings and the considerable progress that has been made in implementing 800 data base services, we do not believe that users will be reluctant to change carriers, as Sprint and CompTel allege. Moreover, any concerns about the reliability of the data base system would apply equally to all 800 service providers, not just AT&T, since the data base system will be used for all 800 calls. Thus, we find unpersuasive arguments that AT&T will retain market power in 800 services due to customers' concerns about the data base system.

12. CompTel also claims that customers will be unwilling to change carriers without automated notice and acceptance procedures.[27] In the *Extension Order*, the Commission rejected this assertion and no party presents any evidence that would cause us now to conclude differently.[28] In particular, no one demonstrates why manual procedures agreed to by the industry will prove inadequate as an interim approach. Therefore, we conclude that there is no basis for deferring further streamlined regulation of AT&T's 800 services until automated notice and acceptance procedures are in place.

13. WilTel, CompTel, and Sprint assert that AT&T will enjoy several advantages from being the incumbent RESPORG for the vast majority of IXC records.[29] Sprint argues that regardless of SMS tariffing requirements, AT&T may cause delays in making SMS record changes; that charges associated with making SMS record changes will be borne disproportionately by IXCs other than AT&T; that all of the procedures for implementing SMS record changes have not yet been resolved; and that it is still not clear whether the incumbent RESPORG will be able to refuse to participate in multiple carrier routing arrangements.[30]

14. We note first that WilTel, CompTel, and Sprint have not provided any support for their allegations that AT&T may refuse to participate in multiple carrier routing arrangements or that it will not make SMS changes in a timely manner.[31] Second, in two recent orders, the Commission and the Common Carrier Bureau took steps to alleviate some of the concerns raised by the commenting parties.[32] In the *CompTel Order*, we determined that any entity that meets appropriate financial and technical eligibility requirements may serve as a RESPORG for an 800 number record at the customer's request. In the *Sprint Order*, the Common Carrier Bureau decided that the NASC, with appropriate written authorization, could make RESPORG changes to the SMS. As a result of these decisions, customers will readily be able to replace RESPORGs that prove insufficiently responsive to their 800 service changes. In addition, carriers will be able to effect a change of RESPORG without relying on the incumbent RESPORG. Moreover, insofar as customers will be able to choose any qualified entity as a RESPORG, not just their major 800 IXC, they will be able to name as a RESPORG an entity that does not have a conflict of interest in implementing their SMS changes.

15. Furthermore, an 800 SMS tariff has been filed identifying the obligations and responsibilities of RESPORGs.[33] The SMS tariff requires RESPORGs to initiate and change an 800 customer record in the 800 SMS at the earliest possible date. The SMS tariff also requires that when an 800 subscriber requests a change of RESPORG, the releasing RESPORG must release the 800 subscriber's records to the receiving RESPORG in two days.[34] As a RESPORG, AT&T must comply with these requirements. To the extent parties argue that these

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[24] As we noted in the *Interexchange Proceeding*, 800 services are purchased primarily by medium and large sized business customers that tend to be sophisticated in their market choices and that possess some degree of purchasing power. *Interexchange NPRM*, 5 FCC Rcd at 2635. Thus, but for the lack of number portability, 800 services were similar to other business services that are subject to a substantial degree of competition. With the implementation of technology allowing number portability, this difference between 800 services and other switched business services is eliminated.

[25] We have already concluded that number portability promotes competition in the 800 market by allowing current 800 subscribers to switch IXCs without abandoning their 800 number and new 800 subscribers to select an IXC to carry their traffic without being limited to the 800 number assigned to that carrier. *See generally*, *800 Order*, 4 FCC Rcd at 2825. This ability to switch to a different vendor precludes the incumbent from charging supracompetitive prices.

[26] CompTel Opposition at 5; Sprint Opposition at 6-8.

[27] CompTel Opposition at 3 n.5.

[28] *Extension Order*, 7 FCC Rcd at 8620.

[29] WilTel Opposition at 2; CompTel Opposition at 4; Sprint Opposition at 5-6.

[30] Sprint Opposition at 5-6; Sprint Reply Comments at 1; *see* CompTel Opposition at 4; WilTel Opposition at 2. Multiple carrier routing allows subscribers to route 800 calls to different IXCs based on various factors, such as time of day or place of origination of the call. *See 800 Order*, 4 FCC Rcd at 2825; *800 Reconsideration Order*, 6 FCC Rcd at 5422.

[31] With respect to multiple carrier routing, AT&T recently announced a RESPORG service that will be available to AT&T 800 users that split their traffic among multiple carriers. *See Network World*, March 29, 1993, at 61. We note further that with the advent of number portability, 800 subscribers will be able to take their business to an AT&T competitor if AT&T does not offer the service the customer seeks. Thus, competition should prevent AT&T from taking any action that would hurt its future relationship with a customer.

[32] *CompTel Order*, 8 FCC Rcd at 1423; Provision of Access for 800 Service, Order, 8 FCC Rcd 1844 (Com. Car. Bur. 1993) (*Sprint Order*).

[33] Bell Operating Companies' Tariff for the 800 Service Management System, Tariff F.C.C. No. 1, Transmittal No.1, § 2.3.1 (filed March 5, 1993) (*SMS Tariff*). This tariff is currently under investigation. Bell Operating Companies' Tariff for the 800 Service Management System, Tariff F.C.C. No. 1 and 800 Data Base Access Tariffs, Order, CC Docket No. 93-129, DA 93-491 (Com. Car. Bur. released April 28, 1993).

[34] In the event that multiple carriers provide service for a particular 800 number, the RESPORG for that record may not add traffic to another carrier's network without first notifying that carrier and obtaining its acceptance of the service order. *See SMS Tariff*, § 2.3.1. Initially, the industry will use manual

requirements are not strict enough to protect against possible RESPORG abuses, these claims are properly raised in the context of the tariff investigation. If we find these claims to have merit, we can address them by requiring changes to the tariffs' terms and conditions.[35]

16. Parties also argue that, notwithstanding fresh look, AT&T will retain market power due to pre-portability service arrangements. They allege generally that fresh look should apply to AT&T's 800 term plans, as well as its bundled service arrangements, and that the fresh look period should be longer.[36] These same arguments are raised in petitions currently before the Commission and will be considered in orders addressing those petitions.[37] In any event, wholly apart from the issue of whether fresh look should be changed as requested, parties have not shown that AT&T would retain significant market power in 800 services without such changes.

17. Sprint contends that AT&T's provision of 800 DA gives it market power in 800 services generally.[38] In the *800 Order*, we considered suggestions concerning how 800 DA might be provided.[39] We permitted AT&T to continue providing 800 DA subject to tariffing and nondiscrimination requirements, while inviting the industry to develop alternative solutions that might be superior.[40] Neither Sprint, nor any other party, has suggested any such solution, nor has any party claimed that AT&T's 800 DA is offered on unfair terms. Finally, no party has suggested how the provision of 800 DA specifically affects the competitiveness of 800 services generally. We therefore cannot conclude that AT&T's control over this service confers on it market power in 800 services generally.

18. We also find no basis for concluding that the Weber patent should preclude us from further streamlining AT&T's 800 service. Even assuming the validity of this patent, no party has shown that it has had, or will have, any material effect on 800 services competition, much less that it will preclude the effective functioning of a competitive market.[41] Likewise, generalized allegations that some customers must reconfigure or replace their customer premises equipment to accommodate a change in 800 provider do not convince us to defer further streamlining.[42]

19. Effective on the date a summary of this order is published in the Federal Register, we will allow AT&T to file its 800 service tariffs, except for 800 DA, on fourteen days notice. In light of the competitiveness of 800 services, such tariffs shall be presumed lawful for the purposes of pre-effective tariff review. Accordingly, AT&T need not file cost support with these tariffs, and price cap ceilings, bands, and rate floors will no longer apply. As with other services subject to further streamlining, we retain the authority to investigate associated tariffs or to find them unlawful after they become effective. These measures, coupled with the significant and growing competition in the 800 services market, should protect consumers from anticompetitive pricing of 800 services.

20. We find that further streamlining of our regulation of AT&T's 800 DA would not be in the public interest and thus, in this respect, we deny AT&T's petition. 800 DA is not affected by number portability and because it will continue to be a monopoly service, we are concerned that elimination of the price cap restraints for these services could lead to higher prices. We therefore retain price cap regulation for AT&T's 800 DA. This service will remain in Basket 2. Because 800 DA will be the only service remaining in the 800 service basket, we make the following adjustments to the price cap rules for Basket 2 services.[43] First, we eliminate service bands for Basket 2, since with the elimination of all 800 services but 800 DA from this Basket, service bands will be unnecessary to protect customers from cross-subsidization. Second, we recalibrate the price cap index (PCI) and actual price index (API) for Basket 2 to reflect the elimination of all services other than 800 DA. We intend that AT&T retain the same flexibility in pricing 800 DA that it currently has. Thus, we will initialize the PCI for the 800 DA basket at the value of the upper limit of the 800 DA Service Band Index (SBI) on the date a summary of this order is published in the Federal Register. Similarly, the initial value for the API will be set at the value of the 800 DA SBI on that same date.

V. CONCLUSION

21. We conclude that with the introduction of 800 number portability, the 800 services market is now substantially competitive. Parties asserting the continued existence of other significant barriers to 800 services competition have not persuaded us to the contrary. Therefore, we grant in substantial part AT&T's petition to modify Part 61 of the Commission's rules to eliminate price cap regulation and apply further streamlined regulation to AT&T's Basket 2 services as of the date a summary of this order is published in the Federal Register.

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notice and acceptance procedures. It is expected that automated procedures will replace these manual procedures in May 1994. *See generally, Extension Order*, 7 FCC Rcd at 8618 n.28.

[35] We note further that Allnet has filed a petition asking that we require RESPORGs to make SMS traffic changes within two business days. *See* Allnet Communication Services, Inc., Emergency Petition for Declaratory Ruling or, In the Alternative, Rulemaking (filed Feb. 17, 1993). This petition, along with the SMS tariff investigation, are the proper forums for raising these RESPORG issues.

[36] *See* WilTel Opposition at 2-4; CompTel Opposition at 1-2; Sprint Opposition at 3; MCI Opposition at 2-3.

[37] *See* Petition of the Ad Hoc Telecommunications Users Committee for Expedited Modification of Fresh Look Policy (filed Nov. 6, 1992); Emergency Petition of Sprint for Declaratory Ruling (filed Dec. 2, 1992).

[38] Sprint Opposition at 3-4, 8.

[39] *See 800 Order*, 4 FCC Rcd at 2836-37.

[40] *Id.; see* AT&T Reply Comments at 5-6 & n.11.

[41] We note that the Weber patent is currently subject to two court challenges. *See* MCI v. AT&T, No. 92-2858 (D.D.C. filed Dec. 21, 1992); U.S. v. Western Electric Co., Inc., No. 82-0192 (D.D.C. filed Dec. 21, 1992). We further note a petition has been filed with the Commission asking it to take certain action regarding the Weber patent. *See* Allnet's Petition for Expedited Declaratory Ruling Regarding AT&T Ownership of Pre-Divestiture Patents (filed July 10, 1992).

[42] *See* Sprint Opposition at 11.

[43] Our treatment of this service under price caps is, of course, subject to the outcome of our review of AT&T's performance under the price caps regime. *See* Price Cap Performance Review for AT&T, Notice of Inquiry, 7 FCC Rcd 5322 (1992).

VI. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED THAT, pursuant to the authority contained in sections 1, 4, and 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, and 201-205, AT&T's Petition IS GRANTED IN PART, to the extent discussed herein, and Section 61.42 of the Commission's rules, 47 C.F.R. § 61.42, is amended, as set forth in Appendix A, effective on the date a summary of this order is published in the Federal Register.[44]

23. IT IS FURTHER ORDERED THAT, Sprint's Petition IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Part 61 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 61 -- TARIFFS

1. The authority citation for part 61 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.42 is amended by revising paragraphs (b)(2) introductory text and (c)(12), redesignating (c)(13) as (c)(17), and adding new paragraphs (c)(13), (c)(14), (c)(15), and (c)(16), to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(b)(1) * * *

(2) The 800 service basket shall contain 800 Directory Assistance.

* * * * *

(c) * * *

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(12) Custom tariff services;

(13) Readyline 800 service;

(14) AT&T 800 service;

(15) Megacom 800 service;

(16) Other 800 services; and

* * * * *

[44] We find good cause for making the rule amendments effective on less than 30 days notice. With the advent of number portability on May 1, 1993, 800 services have become substantially competitive. Making this order effective on less than 30 days notice will enable the public to reap the benefits of this competition at the earliest possible date, while eliminating unnecessary regulatory constraints and delays. *See* 5 U.S.C. § 553(d)(3).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

LOPEZ RADIO, INC. File No. BPH-860221MO

For Construction Permit
for a New FM Station on
Channel 299B in
Corydon, Indiana

MEMORANDUM OPINION AND ORDER

Adopted: May 18, 1993; Released: May 27, 1993

By the Commission:

1. By Memorandum Opinion and Order in *Special Markets Media, Inc.*, 4 FCC Rcd 5753 (1989), we denied, in pertinent part, a petition for reconsideration filed by Lopez Radio, Inc. ("Lopez"), which was referred to the Commission pursuant to 47 C.F.R. § 1.104(b).[1] Subsequently, we denied Lopez's petition for reconsideration of that order. *Lopez Radio, Inc.*, 7 FCC Rcd 5320 (1992). Now before the Commission for consideration is a third "Petition for Reconsideration," which Lopez filed on September 18, 1992.

2. IT IS ORDERED, That, pursuant to Sections 1.106(b)(2) and 1.115(g) of the Commission's Rules, the petition for reconsideration filed on September 18, 1992, by Lopez Radio, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[1] That order affirmed the action of the Mass Media Bureau returning Lopez's above-captioned application as patently not in accordance with Commission Rules, pursuant to 47 C.F.R. § 73.3566(a), for proposing a combination of effective radiated power and antenna height above average terrain which exceeds the maximum permissible such combination for a Class B station set forth in 47 C.F.R. § 73.211(b)(1)(ii). *Special Markets* at 5754.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-142

In the Matter of

Amendment of Section 73.606(b), RM-8208
Table of Allotments,
TV Broadcast Stations.
(Willits, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 7, 1993; Released: May 27, 1993

Comment Date: July 19, 1993
Reply Comment Date: August 3, 1993

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Granite Broadcasting Corporation and KNTV, Inc.[1] ("petitioner"), seeking the deletion of vacant VHF television Channel 11 at Willits, California, or alternatively, the substitution of a UHF channel for the vacant Willits allotment to accommodate petitioner's relocation plans.

2. In support of the proposal, KNTV, Inc., licensee of Station KNTV(TV), Channel 11, San Jose, California, states that the deletion of vacant VHF television Channel 11 at Willits, or the substitution of a UHF channel therefor, would enable it to relocate its transmitter to a more seismically stable site. In this regard, petitioner states that its current transmitter site on Loma Prieta Peak, in the Santa Cruz Mountains, is located on the Sargent-Berrocal fault,[2] which is connected to the San Andreas fault. Having sustained damage to Station KNTV(TV)'s transmitting tower and antenna previously in the Loma Prieta earthquake in October 1989, petitioner desires to relocate its tower to a less vulnerable area. Petitioner urges that not only is it concerned about the potential future financial cost of destruction posed by future seismic activity in the immediate vicinity of its existing transmitter, but since it is San Jose's primary television source of news, it is important that it be able to fulfill its role of providing essential information in future emergencies as well.

3. According to petitioner's consulting engineer, geographic and topographic factors combined would require any movement of Station KNTV(TV)'s transmitter site northward. However, petitioner advises that the presence of vacant Channel 11 at Willits constrains its ability to relocate Station KNTV(TV)'s tower to the north.[3] Moreover, petitioner claims that further movement to the south would result in the degradation of signal quality and terrain shielding into San Jose due to the Santa Cruz Mountains. Petitioner also advises that movement of Station KNTV(TV)'s tower is limited to the east by Station KRXI(TV), Channel 11, Reno, Nevada.[4]

4. In further support of the requested deletion, petitioner comments that Channel 11 at Willits is presently unavailable for application as a result of the current freeze on the filing of petitions for new allotments and applications for vacant allotments in certain metropolitan areas.[5] Willits is located with 189.5 miles (304.9 kilometers) of San Francisco, one of the affected freeze markets. Additionally, petitioner states that Channel 11 may be deleted in the course of the Commission's advanced television ("ATV") proceeding.[6] [7] Consequently, petitioner maintains that deletion of Channel 11 at Willits would not deprive the community of potential television service since that service may never be authorized. However, in the event the Commission is reluctant to delete Channel 11 in the rule making context, or an expression of interest in retaining the allotment is received, petitioner advises that numerous UHF channels are available to Willits as an alternative equivalent substitute channel.[8] [9]

5. Preliminary, we note that although Channel 11 was allotted to Willits at the request of a petitioner over five years ago,[10] it has been unavailable for applications pending resolution of the Commission's ATV proceeding, *supra*. While we are hesitant to delete VHF Channel 11 at Willits under the circumstances, we will provisionally propose to do so, as requested. However, we question whether petitioner's proposal could be accommodated from its intended site for Station KNTV(TV) by further site restricting Channel 11 at Willits, or whether petitioner could operate Station KNTV(TV) in a manner designed to avoid interference to the Willits allotment. In the event petitioner determines that Channel 11 can be further site

[1] Petitioner advises that KNTV, Inc. is a wholly-owned subsidiary of Granite.
[2] According to information provided by petitioner, the Sargent-Berrocal fault system is estimated to have a maximum magnitude earthquake potential of 7.4 Richter.
[3] Coordinates at the reference site for Channel 11 at Willits are 39-32-28 and 123-29-16.
[4] Coordinates at the authorized site of Station KRXI(TV) are 39-35-25 and 119-55-40.
[5] *See Order, Advanced Television Systems and Their Impact on the Existing Television Service*, 52 Fed. Reg. 28346, published July 29, 1987.
[6] Petitioner cites to the *Second Further Notice of Proposed Rule Making* in the ATV proceeding, MM Docket No. 87-268, 7 FCC Rcd 3340 (1992).
[7] Petitioner's statements regarding the Commission's possible future deletion of any channel from the Table of TV Allotments are purely speculative.
[8] Petitioner provided engineering studies to demonstrate that at least twenty UHF channels are available to Willits without a site restriction, at coordinates 39-24-36 and 123-21-12. Channel 11 at Willits has an 18.7 kilometer (11.6 mile) site restriction.
[9] Petitioner's engineering studies claim that since Willits is surrounded by mountains which rise approximately 2,000 feet higher than the community, with nearby peaks reaching 4,600 and 6,800 feet above mean sea level (AMSL), the terrain factors would serve to provide coverage from a UHF-TV facility at Willits comparable or equivalent to coverage from a VHF-TV facility.
[10] See *Report and Order*, MM Docket No. 86-96, 2 FCC Rcd 6962 (1987).

restricted at Willits, it should provide a reasonable assurance that a transmitter site conforming to the site restriction is available at that community. *See Cave City and Radcliff, Kentucky and Santa Claus, Indiana*, 7 FCC Rcd 1363 (1992). Petitioner should also state if there are no transmitter sites available for Station KNTV(TV) that would not cause short-spacing to Channel 11 at Willits. If other sites are available, petitioner should demonstrate why those other locations are not suitable to accommodate its relocation plans. Furthermore, if petitioner intends to relocate to a specific site, it should explain why that particular site is less susceptible to earthquakes than other sites in the area.[11] Failure to provide the requested information could result in a denial of the proposal.

6. While petitioner has alternatively suggested the substitution of a UHF channel as a replacement for VHF Channel 11 at Willits, we are unable to accommodate that aspect of its request in the context of this *Notice*. Consideration of a new UHF allotment at Willits is limited by the terms of the Commission's current freeze since that community is located within 304.9 kilometers (189.5 miles) of San Francisco, one of the affected markets. The Commission is currently in the process of developing a Table of ATV Allotments. As San Francisco is a high density market where optimizing ATV allotments is a difficult task, we would only consider petitioner's substitution request provided an acceptable UHF channel can be found after the Commission determines an allotment plan for ATV use in the San Francisco area.

7. We believe the public interest would be served by seeking comments on the proposal to delete VHF television Channel 11 at Willits, California, to accommodate petitioner's relocation plans. In the event an expression of interest in retaining the channel at Willits is received, the allotment may not be deleted absent a compelling showing that the public interest would be better served by the deletion. Alternatively, in the absence of a public interest showing, an expression of interest may result in the substitution of a UHF channel at Willits provided the provisions set forth in paragraph 6 above can be satisfied.[12]

8. In view of the above, we seek comments on the proposed amendment to the Television Table of Allotments, Section 73.606(b) of the Commission's Rules, with respect to Willits, California, as follows:

	Channel No.	
City	Present	Proposed
Willits, California	11-	--

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **July 19, 1993,** and reply comments on or before **August 3, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Tom W. Davidson, Esq.
Paul S. Pien, Esq.
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1333 New Hampshire Avenue, N.W.
Suite 400
Washington, D.C. 20036

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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[11] According to the Declaration of Richard E. Hammond, petitioner's consultant on seismic events, while Loma Prieta Peak is a poor location for a television transmitter in terms of seismic risk, other locations appear to be available in the greater San Francisco Bay Area that are less prone to severe earth movement.

[12] In the event the latter course of action is pursued, we address petitioner's claim concerning UHF-VHF interband comparability. While a VHF station, in general, is capable of providing greater coverage than a UHF station, the Commission is continually striving to achieve greater equality between UHF-VHF service through comparability of tuning, improvement of UHF signal quality and education of the public. *See Memorandum Opinion and Order and Notice of Proposed Rule Making*, Docket No. 20418, 63 FCC 2d 840, 861 (1977). Regardless, in this instance, we believe that the substitution of a UHF channel at Willits *could* be considered reasonable because favorable terrain and propagation conditions extant in the area surrounding Willits are likely to result in coverage more nearly comparable to a VHF station than would generally be the case in other parts of the country.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-15

In the Matter of

Amendment of Section 73.202(b), RM-8167
Table of Allotments,
FM Broadcast Stations.
(Rupert, Idaho)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 7, 1993; Released: May 27, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 8 FCC Rcd 852 (1993), filed by Inland Broadcast Company ("petitioner"), proposing the substitution of Channel 223C for Channel 223A at Rupert, Idaho, and modification of Station KNAQ(FM)'s construction permit to specify operation on the higher class channel. Petitioner filed comments restating its interest in the allotment. No other comments were received.

2. We believe the public interest would be served by allotting Channel 223C to Rupert, Idaho, as it would provide the community with a wide coverage area FM service. Channel 223C can be allotted to Rupert in compliance with the Commission's minimum distance separation requirements at the petitioner's desired transmitter site with a site restriction of 31.8 kilometers (19.7 miles) southeast of the community.[1] In accordance with Section 1.420(g) of the Commission's Rules, we will modify petitioner's construction permit for Station KNAQ(FM) to specify operation on Channel 223C at Rupert, Idaho.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 12, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Rupert, Idaho	223C

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Station KNAQ(FM), Rupert, Idaho, IS MODIFIED, to specify operation on Channel 223C in lieu of Channel 223A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Inland Broadcast Company, permittee of Station KNAQ(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 223C at Rupert are North Latitude 42-20-06 and West Longitude 113-36-16.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-300

In the Matter of

Amendment of Section 73.202(b), RM-8138
Table of Allotments,
FM Broadcast Stations.
(Ketchum, Idaho)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 7, 1993; Released: May 27, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 8 FCC Rcd 185 (1993), filed by Idaho Broadcasting Consortium, Inc. ("petitioner"), proposing the substitution of Channel 284C for Channel 284A at Ketchum, Idaho, and modification of Station KYAA(FM)'s license to specify operation on the higher class channel. Petitioner filed comments supporting the allotment. No other comments were received.

2. We believe the public interest would be served by allotting Channel 284C to Ketchum, Idaho, as it will provide the community with a wide coverage area FM service. Channel 284C can be allotted to Ketchum in compliance with the Commission's minimum distance separation requirements at its construction permit site.[1] In accordance with Section 1.420(g) of the Commission's Rules, we will modify petitioner's construction permit for Station KYAA(FM) to specify operation on Channel 284C at Ketchum, Idaho.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 12, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Ketchum, Idaho	284C

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Station KYAA(FM), Ketchum, Idaho, IS MODIFIED, to specify operation on Channel 284C in lieu of Channel 284A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Idaho Broadcasting Consortium, Inc., permittee of Station KYAA(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 284C at Ketchum are North Latitude 43-38-36 and West Longitude 114-23-49.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-141

In the Matter of

Amendment of Section 73.202(b), RM-8222
Table of Allotments,
FM Broadcast Stations.
(Lebanon, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 7, 1993; Released: May 27, 1993

Comment Date: July 19, 1993
Reply Comment Date: August 3, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Lebanon-Springfield Broadcasting Company, Inc. ("petitioner"), licensee of Station WLSK(FM), Channel 265A, Lebanon, Kentucky, requesting the substitution of Channel 265C3 for Channel 265A at Lebanon, and the modification of Station WLSK(FM)'s license to specify the higher class channel. Petitioner states that it will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 265C3 for Channel 265A at Lebanon since it will provide the community with a wide coverage area FM service. Channel 265C3 can be allotted to Lebanon in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.9 kilometers (11.1 miles) southeast.[1] As requested, we propose to modify petitioner's license for Station WLSK(FM) to specify operation on the higher powered channel. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 265C3 at Lebanon or require the petitioner to demonstrate the availability of an additional equivalent class channel.

3. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Lebanon, Kentucky	265A	265C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **July 19, 1993,** and reply comments on or before **August 3, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Leonard S. Joyce
Blair, Joyce & Silva
1825 K Street, N.W., Suite 510
Washington, D.C. 20006
(Attorney for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] The coordinates for Channel 265C3 at Lebanon are North Latitude 37-26-02 and West Longitude 85-08-43.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

CENTEL CORPORATION,
Transferor,

and File No. 08374-CL-TC-92 et al.

SPRINT CORPORATION,
and F W Sub Inc.,
Transferees,

For Consent to the Transfer of
Control of Authorizations in the
Domestic Public Cellular Radio
Telecommunications Service and
Other Services.

ORDER

Adopted: May 21, 1993; Released: May 27, 1993

By the Acting Chief, Common Carrier Bureau:

1. On March 4, 1993 the Common Carrier Bureau (Bureau) released an order[1] granting the above-captioned applications and denied petitions to deny filed by The Orwell Telephone Company (Orwell) and American Message Centers (AMC).[2] On March 8, 1993 Orwell and AMC filed a "Joint Petition for a Temporary Stay," requesting that the effectiveness of the *Order* be stayed. In addition, on April 5, 1993, AMC filed a "Motion for Stay." Because the transfer at issue was consummated March 9, 1993, we dismiss the stay requests as moot.

2. Accordingly, IT IS ORDERED that the "Joint Petition for a Temporary Stay" filed by The Orwell Telephone Company and American Message Centers and the "Motion for Stay" filed by American Message Centers ARE DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief, Common Carrier Bureau

[1] Applications of Centel Corporation and Sprint Corporation, Memorandum Opinion and Order, DA 93-251 (Com. Car. Bur. 1993) (*Order*).
[2] The *Order* also dismissed "Comments and Request for Investigation" filed by Francesco Galesi.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

INTEGRETEL, INC.,
Complainant,

v. File No. E-92-106

CINCINNATI BELL
TELEPHONE COMPANY
Defendant.

ORDER

Adopted: May 19, 1993; Released: May 27, 1993

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

I. INTRODUCTION

1. Cincinnati Bell Telephone Company (Cincinnati Bell) has filed a motion requesting that we dismiss the above-captioned formal complaint filed by Integretel, Inc. (Integretel).[1] Alternatively, Cincinnati Bell asks that we hold the proceeding in abeyance pending disposition of the Cincinnati Bell's outstanding motion for clarification and petition for reconsideration of the Commission's Order in *Cincinnati Bell Telephone Company*, 6 FCC Rcd. 3501 (1991) (*CBT Order), recon. pending*.[2] In addition, Cincinnati Bell has also filed a motion requesting that we stay discovery pending action on its motion to dismiss or that we extend the discovery deadline until 30 days after our decision on the motion.[3] The Complainant has filed an opposition to the motion to dismiss, and Cincinnati Bell has replied.[4] For the reasons specified hereinafter, we deny Defendant's Motion to Dismiss.

II. BACKGROUND AND CONTENTIONS

2. Cincinnati Bell maintains a database containing line based account information on its telephone calling card holders. The database also generates and maintains Personal Identification Numbers (PINS) assigned to each card-holder to prevent unauthorized use of the card. The primary function of the database is to maintain and provide information necessary to validate calls made with calling cards. In the *CBT Order* the Commission concluded that Cincinnati Bell's provision of validation information solely to AT&T and to no other interexchange carrier constituted unreasonable discrimination in violation of Section 202(a) of the Communications Act. The *CBT Order* directed Cincinnati Bell to provide to all interexchange carriers access to the validation information provided to AT&T. Cincinnati Bell subsequently sought clarification or reconsideration of the *CBT Order*.[5]

3. In seeking dismissal or abeyance of Integretel's complaint, Cincinnati Bell argues that Integretel fails to state a cause of action upon which relief can be granted. Cincinnati Bell advances several arguments in support of its position. Defendant argues that the issues raised in the complaint are premature because the Commission has not yet issued its ruling on Defendant's Motion for Clarification and Reconsideration of the *CBT Order*. Defendant further argues that retroactive application of the *CBT Order* violates its due process rights since prior to the *CBT Order*, no rule existed establishing that the provision of validation data came under the purview of Title II of the Communications Act. Cincinnati Bell further contends that Integretel has not suffered any injury as a result of Cincinnati Bell's actions, and it has not specified the amount of damages it seeks. In addition, Cincinnati Bell claims that Integretel lacks standing to seek damages because the *CBT Order* establishes an obligation to furnish validation information to interexchange carriers and not billing agents such as Integretel. At the very least, Cincinnati Bell contends that the Commission should stay this complaint proceeding in order to eliminate unnecessary discovery and ensure consistent interpretation of the *CBT Order*.

4. Integretel maintains that the arguments advanced by Defendant do not warrant dismissal of Integretel's complaint. Integretel asserts that contrary to the Defendant's claim, the Commission has the authority to declare specific past practices of a carrier unreasonable or discriminatory. In addition, Integretel maintains that the Defendant has not fully complied with the *CBT Order* and that it was directly harmed by this practice. According to Integretel, it has stated with reasonable certainty the

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[1] Motion to Dismiss (filed October 15, 1992).

[2] *Cincinnati Bell Telephone Company, Tariff FCC No. 35*, CC Docket No. 89-323, Transmittal No. 518, Motion for Clarification and Petition for Reconsideration of *CBT Order* (filed June 24, 1991).

[3] Motion to Stay Discovery Pending Further Order of the Commission, filed November 25, 1992. A status conference was held on December 2, 1992 to discuss the scope and timing of discovery. Complainant and defendant were advised at that time that discovery would proceed on issues pertaining to liability only and that discovery concerning possible damages would take place once liability, if any, is determined. Subsequent to the status conference the parties filed additional motions. On February 19, 1993 Cincinnati Bell filed a motion to compel responses to its first set of interrogatories or in the alternative stay discovery, on March 1, 1993 Integretel filed its opposition, on March 16, 1993 Cincinnati Bell filed its reply, on march 31, 1993 Integretel filed a motion to strike portions of Cincinnati Bell's reply and on April 14, 1993 Cincinnati Bell filed its opposition. Notwithstanding the apparent disagreement among the parties about the staff's directions at the status conference, we rule in this order that, until otherwise directed by the staff, discovery shall proceed with respect to liability only. To the extent that Cincinnati Bell seeks to compel response to discovery pertaining to damages, we defer ruling on Cincinnati Bell's motion at this time.

[4] Opposition to Motion to Dismiss (filed October 28, 1992); Reply to Opposition to Motion to Dismiss (filed November 9, 1992).

[5] *See, Supra*, note 2.

amount for which recovery is sought and it properly reserved its right to specify damages via a supplemental complaint. Finally, Integretel claims that no useful purpose would be served by holding the proceeding in abeyance because this proceeding is the appropriate forum in which to consider the Defendant's liability.

III. DISCUSSION

5. We are not persuaded by Cincinnati Bell's arguments that Integretel's complaint fails to state a cause of action. The Communications Act grants private parties a right to file complaints against carriers and authorizes the FCC to award damages. 47 U.S.C. §§ 206, 208-209, and Integretel filed its complaint against Cincinnati Bell pursuant to these provisions. Under the Commission's rules, all that is needed to make out a *prima facie* case in a complaint proceeding is a filing containing "facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation...."[6]

6. The case that Integretel presents in this complaint proceeding is straightforward. The action it alleges the defendant has "done or omitted to be done" in contravention of Sections 201(b) and 202(a) of the Act and the Commission's *CBT Order* is to fail to provide validation information in a reasonable, nondiscriminatory manner. The matters raised by the complainant are properly before us in this Section 208 proceeding.[7] Cincinnati Bell's claim that the complaint is premature in light of the uncertain status of the *CBT Order* and that it improperly seeks retroactive application of the *CBT Order* are unavailing. The question of whether Cincinnati Bell's conduct prior to the *CBT Order* violated the just and reasonable standards of the Act is separate and apart from the question of Cincinnati Bell's obligations under the *CBT Order*. Moreover, absent some affirmative action by the FCC or competent court granting a stay of the *CBT Order*, that Order retains the force of law and compliance is expected.[8]

7. Nor are we persuaded by Defendant's claim that we should hold the proceeding in abeyance. While Defendant has not technically requested a stay of the *CBT Order*, it is seeking extraordinary relief similar to a stay *pendente lite* by requesting that we defer action on Integretel's complaint which, *inter alia*, questions Cincinnati Bell's compliance with the *CBT Order*. We have carefully considered the arguments presented by the parties and conclude that Cincinnati Bell has failed to establish that it is entitled to the extraordinary relief it seeks. Defendant has not made a strong showing that is likely to prevail on the merits on the issues raised by Complainant or that it would be irreparably injured if its request to defer this proceeding were not granted.

8. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended 47 U.S.C. § 154(i), and the authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the motion to dismiss and request to hold proceeding in abeyance filed by Cincinnati Bell on October 28, 1992 ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

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[6] 47 C.F.R. § 1.720(b).

[7] Integretel has reserved the right to pursue damages in a supplemental complaint, and it is entitled under the Commission's rules to proceed in this manner. Section 1.722 of the rules provides that damages may be awarded in a supplemental complaint proceeding based on a determination by the Commission relating to the original complaint that it "contains appropriate allegations showing such evidence that will identify, with reasonable certainty, the amount of damages for which recovery is sought." 47 C.F.R. § 1.722.

[8] *See* 47 U.S.C. § 416(c) "It shall be the duty of every person, its agents and employees . . . to observe and comply with such orders so long as the same shall remain in effect."

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 83-1376

In the Matter of

Integration of Rates and Services
for the Provision of Communications
by Authorized Common Carriers between
the Contiguous States and Alaska, Hawaii
Puerto Rico and the Virgin Islands

TENTATIVE RECOMMENDATION AND ORDER INVITING COMMENTS

Adopted: May 17, 1993; Released: May 17, 1993

By the Federal-State Joint Board

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I. INTRODUCTION

1. In this *Tentative Recommendation and Order Inviting Comments*, we adopt a tentative recommendation for the creation of a new market structure for the provision of interstate telecommunications service between Alaska and the contiguous states (Lower 48) and between Alaska and Hawaii. We tentatively conclude that this market structure represents the best balancing of the five objectives that we have previously articulated: universal service, rate integration, revenue requirement neutrality, competition, and efficiency. We require the American Telephone & Telegraph Company (AT&T) and Alascom, Inc. (Alascom) to submit joint or separate plan(s) to implement this new market structure. We invite all interested parties to comment on the new proposed market structure and on AT&T's and Alascom's implementation plan(s). We additionally invite comment on a separate proposal by AT&T for resolution of the issues in this proceeding. It is our intent that after review of all the comments and proposals, we will then issue a final recommendation to the Federal Communications Commission (Commission).

II. EXECUTIVE SUMMARY

2. Alaska interstate message telephone service and wide area telecommunication service, hereinafter collectively referred to as MTS, is now provided under a Joint Service Arrangement (JSA) between AT&T and Alascom. Under the JSA, Alascom and AT&T serve Alaska jointly with AT&T providing northbound service and Alascom providing southbound service. Alascom furnishes facilities in Alaska and connects with AT&T in the Lower 48. AT&T reimburses Alascom for all expenses it incurs in its provision of interstate MTS service with AT&T. Pursuant to a "frozen" allocator, approximately 86% of Alascom's circuit equipment costs are assigned to the interstate jurisdiction. Private line service is not governed by the JSA and is furnished on a statewide basis principally by Alascom. We tentatively conclude that, subject to institution of suitable transition mechanisms, the JSA should be terminated and its service arrangements replaced by our proposed market structure. This termination is tentatively effective three calendar years after the date the Commission adopts a final order in this proceeding establishing effective transition mechanisms.

3. MTS between Alaska and Hawaii is provided by AT&T under arrangements with both Alascom and GCI Communications, Inc. (GCI). Any contracts between AT&T and Alascom for service to Hawaii would also terminate within three calendar years, and service shall thereafter be provided via tariff.

4. Under our proposed market structure, AT&T would provide interstate MTS between Alaska and the Lower 48 (northbound and southbound) at integrated rates and under the same terms and conditions applicable to its provision of service in the Lower 48. AT&T would also be obligated to furnish interstate MTS service between Alaska and Hawaii at integrated rates. To provide these services, AT&T must obtain the requisite authority pursuant to Section 214 of the Communications Act of 1934 (Communications Act), 47 U.S.C. § 214. After the JSA is terminated, Alascom may provide interstate MTS independently from AT&T under its own tariff with no obligation to charge AT&T's integrated rates. Our market structure would not involve any mandatory requirements for transfer of customers in Alaska between Alascom and

AT&T. To the extent the parties envision such transfers, these will need to be submitted and approved in transition plans.

5. We tentatively conclude that, in view of the prohibition against construction of duplicate facilities in rural Alaska, any services provided to interexchange carriers (IXCs) by Alascom under tariff should ultimately be offered on a non-discriminatory basis at geographically averaged tariffed rates. We also would require that Alascom continue to provide interstate private line service upon reasonable request pursuant to its existing federal tariffing and Section 214 obligations.

6. We also tentatively conclude that the cost separations factor applicable to Alascom's interexchange circuit equipment should be reduced over a 10-year period from its current level of approximately 86% to 75%. However, payments for Alascom's interstate services would be made as if a 75% allocator were in effect. Alascom would recover the difference between 86% (or the current transition level) and 75% from a special, temporary fund called the Alaska Fund. The Alaska Fund would be administered by the National Exchange Carrier Association, Inc. (NECA). At the end of 10 years the 75% separations factor would be fully phased-in and the Alaska Fund fully phased-out.[1]

7. In addition, our tentative recommendation would require a reduction of Alascom's interstate and intrastate revenue requirement, funded by AT&T. We tentatively conclude that this is necessary to achieve a more competitive market for Alaska services and to protect against harmful jurisdictional cost shifts which are two of our five goals. Such a reduction in revenue requirement could be achieved through accelerated cost recovery and would be the subject of an implementation plan(s) to be filed by AT&T and Alascom.

8. Finally, under our tentatively recommended market structure, AT&T would be required to use Alascom's facilities for its Alaska traffic for three years with a phase-out of this obligation over the succeeding four years. At the end of seven years, AT&T would be permitted to provide service to and from Alaska without a requirement to use any Alascom facilities. Lastly, our tentative recommendation addresses a number of miscellaneous issues pertinent to the new market structure.

9. This Order solicits comments in response to a tentative recommendation for restructuring the Alaska interstate market but does not endeavor to specify all details of implementation of that market structure. This level of refinement necessarily follows adoption of the basic form and transition mechanisms for the market. The implementation plans and comments should assist in defining these details and in establishing the final timetable to be used for various aspects of the proposed market structure.

III. BACKGROUND

10. Alaskan telecommunications issues have been before the Commission for over twenty years. Since 1985 the Alaska Joint Board has been attempting to determine the appropriate interstate telecommunications market structure for Alaska. During this period, interested parties have had numerous opportunities to comment in response to information requests by the Alaska Joint Board and several market proposals offered by the Alaska Joint Board and other parties.

A. Supplemental Order

11. On January 3, 1989, the Alaska Joint Board issued a *Supplemental Order* inviting comments on five objectives to govern the resolution of this proceeding and two alternative market structure options. Parties were also invited to present additional market structure proposals to suggest improvements in the current arrangement in the event that an acceptable alternative was not found.[2] The five objectives we identified to govern the resolution of this proceeding were: (1) preservation of universal service; (2) continuation of rate integration; (3) market based competitive entry; (4) increased efficiency; and (5) jurisdictional revenue requirement neutrality.

B. Master Agreement and GCI Petition

12. On January 29, 1992, AT&T, Alascom, Pacific Telecom, Inc. (PTI), and Telephone Utilities of Alaska, Inc. (TUA) filed a Joint Petition seeking approval of a Master Agreement (MA) for the provision of Alaska telecommunications services. General Communication Incorporated (GCI) also filed a petition on that date requesting that the Commission initiate a new proceeding independent of the CC Docket No. 83-1376 Joint Board to resolve Alaska market structure issues.[3]

13. Key terms contemplated under the Master Agreement were: (1) the JSA would be dissolved and AT&T could establish points of presence (POPs) in Alaska; (2) AT&T would be responsible for provision of interstate MTS at integrated rates and would purchase Alascom's customer list and capacity on the Alaska Spur to make service possible; (3) AT&T would make payments totalling $330 million to PTI and its holding companies; (4) Alascom would transfer a portion of its facilities to TUA;[4] (5) the restructured TUA would provide interstate access (pursuant to NECA tariff) and intrastate service in Alaska using a new statewide study area and the local exchange carrier (LEC) separations factor for circuit equipment;[5] (6) TUA would promise no intrastate rate increases during a five year transition; (7) AT&T and TUA would enter into various lease agreements; and (8) PTI, Alascom, and TUA would not compete against AT&T for provision of interstate and international MTS services for three years.

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[1] United Utilities, Inc. (UUI) would also be required to use the 75% allocator for its interexchange circuit equipment and, concomitantly, would be eligible for payments from the Alaska Fund.

[2] Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands, CC Docket No. 83-1376, 4 FCC Rcd 395 (1989) (*Supplemental Order*)..

[3] On March 4, 1992, the Joint Board issued a Public Notice requesting comments and reply comments on the MA and the GCI proposal.

[4] All of Alascom's communications facilities would be transferred to TUA, except for Alascom's interests in the Alaska Spur, certain assets necessary to provide interstate and international private line services, and assets necessary to serve Magadan, Russia.

[5] Changes from the IXC to the LEC separations factor would occur under a five year transition mechanism (Alaska Market Adjustment).

The MA was conditioned on regulatory approval of the Joint Petition and all related documents by November 1, 1992. This deadline was later extended to January 15, 1993.[6]

C. State Members' Plan: Alaska Market Structure

14. In response to the MA, other plans, and pleadings filed by commenting parties, the State Members of the Alaska Joint Board released a Memorandum of Principles - Alaska Market Structure: The State Members' Plan on November 5, 1992.[7] Major points of the State Members' Plan were: (1) the JSA would be eliminated after a suitable transition period; (2) there would be no consolidation of TUA and Alascom; (3) Alascom could continue to provide interstate MTS, but if it chose not to, it would be required to provide a plan for the smooth transition of its customers to alternate carriers; (4) Alascom would be required to provide interstate interexchange switching and transport facilities to all IXCs on an non-discriminatory basis; (5) Alascom would be required to provide intrastate and private line services; (6) Alascom would not participate in NECA; (7) AT&T would be responsible for interstate MTS at integrated rates; (8) Alascom would remain a dominant carrier; (9) during a three year transition, AT&T would be required to purchase its switching and transport services from Alascom and to make additional annual payments to allow Alascom to employ accelerated depreciation to reduce its interstate and intrastate net plant by at least an additional $50 million per year; and (10) Alascom would continue to employ the frozen circuit equipment factor.

IV. MARKET STRUCTURE

A. Introduction

15. The current structure of the interstate MTS market for Alaska was basically set in the late 1970s in response to the Commission's requirement for full rate integration. At that time, AT&T and Alascom entered into the JSA. While this Alaska market structure resembles the toll pool and settlements environment of the Lower 48 in the late 1970s, it has not tracked the dramatic changes that divestiture, competition, and technology have produced since then in the Lower 48.

16. There are few, if any, advocates for the current market structure's preservation. On this issue alone, we find substantial agreement among interested parties that the market structure in Alaska needs to be changed. In this tentative recommendation, we outline a proposal for the termination of the JSA and for creation of a market structure similar to that in the Lower 48 with mechanisms to preserve universal service and provide for transitional cost support while Alascom adjusts to a competitive environment.

B. Existing Market Conditions and Structure

17. The *Supplemental Order* profiled the demographic composition of the Alaska market and took note of the characteristics that had required, and to some extent still do require, a unique market structure. It was reported in the *Supplemental Order* that the State of Alaska then had the lowest population density of any state, with the majority of the residents located in small communities of less than 500 people. Both per-capita income and cost-of-living for Alaska residents were higher than comparable national averages, with the gap between the national and state specific statistics being greater for cost-of-living than for per capita income.[8]

18. Twenty three exchange carriers provide local service in Alaska to approximately 270,000 access lines in about 250 exchanges.[9] Both intrastate and interstate equal access is available in most, if not all, of the exchanges served by competitive IXCs.

19. Alascom furnishes both interstate and intrastate long distance services over a mix of owned and leased satellite, microwave, and cable facilities located in Alaska, the Lower 48, and Canada.[10] Alascom provides interstate MTS in conjunction with AT&T pursuant to the JSA, an agreement jointly developed by Alascom and AT&T implementing rate integration and approved by the Commission. Interstate private line services are offered independently from the JSA, and AT&T has not significantly participated in the Alaska private line market. Generally, private line services are offered on an "end-on-end" basis, with each carrier developing separate rates for the portion of the circuit it provides based on its own costs.[11]

20. For MTS between Alaska and the Lower 48, Alascom interconnects its facilities with AT&T's network in the Lower 48. Communications signals are transmitted by Alascom between the connection point in the Lower 48 and gateway entry locations at or near Anchorage, Fairbanks, or Juneau. Each gateway location has one or two earth station antenna systems and a Class IV entry switch. Almost all of the AT&T/Alascom interstate message traffic passes through one of these switches to reach Alaska exchange carrier facilities.[12]

21. GCI, a nondominant carrier under the Commission's rules, provides interstate and intrastate message and private line services primarily through a satellite-based network of its own. It also uses access services obtained from other carriers. GCI's interstate MTS consists of both northbound and southbound offerings, with service provided both to end-users and to other carriers. GCI is the primary competitor to Alascom for the provision of interstate and intrastate service in Alaska.[13] In addition, a number of nondominant resellers also operate in the Alaska interstate interexchange market.

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[6] In January, 1993, AT&T notified us that the MA had expired and that the parties had elected not to extend its effective date. In light of this development, the MA is moot. Given that it is no longer pending, we will not further address the merits of the MA in this Order.

[7] On December 2, 1992, a Public Notice was issued to invite comments on the State Members' Plan.

[8] *Supplemental Order*, 4 FCC Rcd at 409, n.18.

[9] APUC Annual Report to the Legislature, 1992.

[10] Alascom is a dominant carrier under the Commission's Rules. Policies and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof, 98 FCC 2d 1191, 1201 n.33 (1984).

[11] *Supplemental Order*, 4 FCC Rcd at 396, para. 11.

[12] *Id.* at para. 10.

[13] *Id.* at para. 12-14.

C. New Market Structure

1. Elimination of the JSA

a. Parties' Recommendations

22. In the *Supplemental Order*, we identified deficiencies in the JSA and stated five objectives to be followed in finding a resolution to the issues in this proceeding. We concluded that the JSA gave Alascom "little reason to control costs," that it could create incentives for a carrier "to inflate its rate base in order to increase earnings," and that it "complicates the determination of the rates that other IXCs should be charged for their use of the Alascom network."[14]

23. Most parties in this proceeding have opposed the long term continuation of the JSA, and even Alascom has participated with AT&T in an attempt to propose an alternative to the JSA.[15] AT&T strongly opposed the JSA, stating that the JSA was inappropriate and should be terminated as soon as possible.[16] AT&T has indicated that it has no desire to remain in a long term partnership arrangement with Alascom for the provision of service.[17]

24. The Alaska Telephone Association, Inc. (ATA) called for elimination of the JSA, after a suitable transition period, due to its anticompetitive effects.[18] The State of Alaska urged that we adopt the principle that the JSA may be terminated after a reasonable transition period.[19] GCI asserts that the "JSA is inconsistent with our objectives, the competition policies established by the Alaska Legislature, and the public interest."[20] MCI stated that the JSA should be terminated after a suitable transition period but urged that Alascom not be given "some protection or relief" from competition in order to end the JSA.[21]

b. Discussion

25. Conditions have changed dramatically since 1980 when the Commission accepted the JSA. The interstate toll settlements pool has been eliminated and replaced by a competitive market structure with cost-based access charges. Multiple carriers now vie for interexchange customers, competing on price and quality of service. The Commission has recognized and promoted the benefits to be derived from a competitive toll market structure which encourages carriers to eliminate waste, adopt new technology, develop innovative services, and improve customer service. Local and toll access competition is now emerging and promises to bring the same incentives for economic efficiency, quality, and competitive prices to these markets.

26. Alascom, however, has not felt the presence of formidable interstate competition. As long as the JSA exists, there is little incentive for Alascom to control costs or trim its rate base as both its revenue requirement and a customer for its interstate services are virtually assured.

27. Based on current conditions and comments, we tentatively conclude that the public interest would be better served by terminating the JSA and thereby restructuring the interstate telecommunications market in Alaska to promote competition, open entry, and improved efficiency incentives. Merely terminating the JSA, however, does not, by itself, adequately address the market structure problems in Alaska. This action taken in isolation could harm carriers and adversely affect the public by accomplishing the goals of competition and efficiency at the expense of the goals of universal service and revenue requirement neutrality. Therefore, we tentatively recommend here that several transition mechanisms be implemented and that the JSA be terminated in conjunction with the transition mechanisms recommended in this order. We seek comment on this proposal.

2. Long Term Market Structure

28. We have developed an Alaska interstate market structure that we believe could be advanced to the Commission as our final recommendation, subject to consideration of the implementation plans and any comments that are filed. In the following sections we will explain the various aspects of our tentative recommendation and the reasoning behind its development. We seek comments on all aspects of our proposed long term market structure.

a. Facility Issues

29. Under the proposed long term market structure, Alascom and AT&T, after obtaining appropriate authorizations, may each individually build or lease facilities in order to provide their services under the same regulatory requirements that are applicable to dominant IXCs today in the rest of the nation, subject to any prohibition against construction of duplicative facilities in rural Alaska.[22]

30. A situation may arise where customers in a remote area of the state require interexchange service, but no facilities exist. Currently, Alascom has a commitment to build facilities to serve communities of 25 or more that request interexchange services.[23] We would tentatively recommend that this commitment on the part of Alascom continue and that Alascom be required to build facilities to meet the transport and switching requirements of its carrier customers.[24]

b. Service Issues

i) MTS

31. As stated in the *Supplemental Order* , we strongly support the objectives of universal service and rate integration. Consistent with these objectives, one or more carriers must be responsible for ensuring that interstate

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[14] *Id.* at para. 58.
[15] Master Agreement, filed January 29, 1992.
[16] AT&T's Comments, December 18, 1992 at 4.
[17] Supplemental Comments of AT&T, March 12, 1990 at 1-2.
[18] ATA Comments, December 17, 1992 at 2.
[19] State of Alaska Reply Comments, January 15, 1993 at 5.
[20] General Communication, Inc. Comments, December 18, 1992 at 7.
[21] MCI Comments, December 18, 1992, at 1.
[22] Whether duplicative facilities should be allowed in the Alaska bush is the subject of a separate proceeding.
[23] State of Alaska Comments, November 13, 1992 at 25.
[24] A requirement that Alascom meet all reasonable requests for service from its carrier customers is especially critical since duplicative facilities are not currently allowed in the Alaska bush.

MTS is available at reasonable rates to all those requiring such service. AT&T currently has the obligation of providing MTS to Alaska at rate-integrated levels. We propose that AT&T should continue to be responsible for providing Alaskan consumers with interstate MTS at the same integrated rate levels and under the same terms and conditions available to other AT&T customers in the rest of the nation. This requirement would be broadened to include provision by AT&T of interstate MTS service between Alaska and Hawaii at integrated rates.

32. Alascom/AT&T MTS customers in Alaska currently perceive Alascom as the interstate IXC providing MTS in Alaska.[25] Customers are not generally aware that AT&T is involved in the provision of "Alascom's" service. If Alascom does not propose to provide interstate service under the new market structure, Alascom would be required to file under Section 214 of the Communications Act for authority to exit the market.[26] Among other things, that filing should include a proposal for the smooth shifting of Alascom's customers to alternative carrier(s) that allows sufficient time for the changeover to occur in an orderly fashion. The public interest requires that Alascom not be allowed to leave the MTS market until it is clear that service to its present customers will not be interrupted as a result of Alascom's business decision.[27]

ii) Alascom Common Carrier Services

33. We propose that Alascom provide other IXCs with what it terms interstate "access" services to the facilities of LECs in Alaska.[28] Alascom would offer all interstate interexchange transport and switching services (hereinafter referred to as Alascom Common Carrier Services) needed to complete the long distance service of other carriers up to the Alascom point of interconnection with each Alaska local carrier. Under the proposed market structure, Alascom would be required to provide Alascom Common Carrier Services on a non-discriminatory tariffed basis to all carrier customers requesting interexchange switching and transport service.[29]

34. GCI has requested that both Alascom and AT&T be required to geographically average the access charges that they assess their carrier customers.[30] GCI stated that without a geographic rate averaging requirement, Alascom would be able to assign all of its network costs to the rural, non-competitive areas of the state. It is argued that IXCs would have no option but to pay Alascom's rates because Alascom retains a facilities monopoly in those areas. AT&T also supports statewide averaging of Alascom's Common Carrier Service rates stating a concern that costs for competitive services could be inappropriately allocated to other services for which Alascom is the sole provider.[31]

35. We generally concur with the concerns expressed by GCI and AT&T that Alascom not be able to lower its rates in the competitive urban areas and recover all or virtually all of its costs in the bush areas, where it is the monopoly provider and where all carriers with statewide service termination must pay Alascom's rates. Accordingly, we propose that a geographic averaging requirement be placed on Alascom's rates for its interstate Common Carrier Service in Alaska.

iii) Private Line Services

36. Alascom is the primary carrier providing statewide interstate and intrastate private line services to the Alaskan public, with some competition from GCI and presumably other carriers.[32] To insure that Alaska's private line services continue, we propose to recommend that the new market structure include a requirement that Alascom provide interstate private line services statewide.[33]

37. Today, AT&T does not directly serve as a private line carrier in Alaska. Under the proposed new market structure if AT&T chooses to provide interstate private line services in Alaska, it would be required to do so under the same rates, terms, and conditions as it does in the rest of the nation. Similarly, if AT&T chooses to provide private line services in Alaska, it must obtain the requisite Section 214 authority and make available its services statewide to the same extent as comparable AT&T services are available throughout the nation.

c. Dominant Carriers

38. The parties' comments reflect differing viewpoints regarding the dominance of AT&T and Alascom in the Alaska market.[34] AT&T has argued that it would be deemed nondominant for its southbound Alaska MTS if it had no Section 214 authority and no initial southbound customer base. AT&T further stated that there has been no finding that AT&T's "alleged dominance in the lower 48 states extends to southbound Alaska traffic".[35] GCI argued

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[25] Southbound MTS services are offered under tariff filed by Alascom (rather than AT&T) with the Commission. Alascom bills and markets the southbound service in Alaska. AT&T was not listed as an option on the interstate presubscription ballot in Alaska nor is AT&T's involvement in this service publicized by Alascom.

[26] Alascom would not be allowed to leave the interstate MTS market prior to termination of the JSA.

[27] To achieve this end, Alascom may, at its discretion, sell its customer list to another carrier after the termination of the JSA. MCI stated that Alascom should not be allowed to sell its customer list, but provided no evidence or argument to support its position. MCI Comments, December 18, 1992 at 3. If Alascom sells its customer list to another carrier, customers must be notified of the change.

[28] Alascom Comments, December 18, 1992 at 9-11. Alascom would also continue to provide transport to existing locations where no LEC existed and to extend its facilities to serve new locations where no LEC existed, under the same conditions as it does today.

[29] Alascom states it "has no objection to reselling its services to other IXCs." Alascom Comments, December 18, 1992 at 30.

[30] GCI Comments December 18, 1992. GCI would also require geographic rate averaging for Alascom's end user customers.

[31] AT&T Reply Comments, January 15, 1993 at 9.

[32] Unlike MTS, private line services are not governed by the JSA.

[33] Alascom has stated no intention to leave the interstate private line market. If it decides to leave the interstate private line market, it must demonstrate to the Commission that its abandonment of service is in the public interest and consistent with Commission policy and that a suitable mechanism exists for shifting its private line customers smoothly to alternate carriers.

[34] AT&T Comments, December 18, 1992, at 10 n.10, 15.

[35] *Id.* at 15.

that AT&T's dominance in the Alaska market is a consequence of its dominant national position in the United States. [36]

39. We propose to recommend that both Alascom and AT&T retain their status as dominant carriers while the JSA is in effect. Because of AT&T's ongoing obligation to provide interstate MTS service in the Alaska market at integrated rates after the JSA is eliminated, we tentatively recommend that AT&T be deemed dominant in the provision of both northbound and southbound MTS services and that it be required to obtain all necessary authority to serve the southbound market. AT&T would also be considered dominant in the Alaska-Hawaii market and would need to acquire the requisite Section 214 authority for this service. We further propose to recommend that after elimination of the JSA, Alascom continue to be considered dominant in its provision of MTS and private line service and also be designated a dominant carrier for Alascom Common Carrier Services. That conclusion is based upon Alascom's primary control over the Alaska Spur, Alascom's statewide network, and Alascom's service and facilities monopolies in those areas where duplicative earth station construction is not allowed.[37]

V. COST ALLOCATIONS

A. Allocation Factor for Alascom Circuit Equipment

1. Background

40. The parties in this proceeding have historically taken divergent positions regarding what circuit equipment separations factor should be used by Alascom. AT&T has contended that Alascom, which currently employs a frozen mileage/minute based interexchange circuit equipment factor under Section 36.126(e)(3) of the Commission's rules, 47 C.F.R. § 36.126(e)(3),[38] instead should either employ the termination/minutes-based LEC procedures or phase-in a reduction of the mileage used to calculate Alascom's separations factor to levels reflected by actual usage. It is argued that the current frozen factor is outdated; insupportable; unreasonable due to allocation of mileage insensitive costs on a mileage sensitive basis; unfair, due to the high percentage (about 86%)[39] of costs allocated to the interstate jurisdiction; and likely to make it difficult for Alascom to compete in the interstate market.[40] Alascom argues that by virtue of its provision of "access" services and its proposed withdrawal from the interstate MTS market, it would no longer be an interstate IXC and, therefore, it would be inappropriate for Alascom to employ the IXC separations factor.[41] Proponents of retaining the current separations factor, primarily the ATA, the State of Alaska, GCI, MCI, and UUI, argued for maintenance of the frozen allocator and claimed that no rationale exists for treating Alascom as a LEC.[42] It is further argued by GCI, the State of Alaska, and UUI that revision of the circuit equipment factor could lead to unacceptable and unreasonable increases in the intrastate revenue requirement. Estimates for the increase vary from $30 million to $50 million or more.[43]

2. Discussion

41. Our proposed market structure, by terminating the JSA, will eliminate the current mechanism under which Alascom is reimbursed for expenses incurred in provision of Alaska Common Carrier Service. Instead of virtually guaranteed reimbursement from AT&T via JSA payments, Alascom would recover its expenses through tariffed service charges. After transition mechanisms have concluded, Alascom would compete on equal footing with all other carriers for the provision of transport and switching services to IXCs like AT&T. For this and other reasons, it is apparent that our proposal would increase the competitive pressures faced by Alascom.

42. Under this new, more competitive market structure, we tentatively conclude that the separations rules applicable to Alascom should be changed. On the basis of the information before us, it does not appear, however, that Alascom provides "telephone exchange service" as the term is customarily understood under Section 3(r) of the Communications Act, 47 U.S.C. § 153(r). The vast majority of services provided by Alascom are for the transmission and switching of communications between exchanges, and, thus, the LEC circuit equipment allocator would not, by its own terms, be applicable. We propose instead that the frozen separations allocator be transitioned down to 75% over a period of 10 years.

43. A modification in the separations factor that would assign relatively less to the interstate jurisdiction and somewhat more to the intrastate jurisdiction would reduce a substantial barrier to Alascom's ability to effectively

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[36] GCI Reply Comments, January 15, 1993 at 19.

[37] Alascom's dominant status for interstate MTS may be reviewed after the proposed transition period.

[38] A large part of Alascom's total costs are associated with radio and satellite communications transmission equipment (other circuit equipment). 47 C.F.R. § 36.126(e)(3) states that "Other Interexchange Circuit Equipment - Category 4.23" shall be allocated based on a company specific factor frozen at the levels reached on December 31, 1985. Both AT&T and Alascom employ this provision to allocate their other circuit equipment costs. The term "Circuit Equipment" encompasses the Radio Systems and Circuit Equipment recorded in Accounts 2230-2232 of the Uniform System of Accounts respectively. The term includes central office equipment, other than switching equipment and automatic message recording equipment, used to derive communications transmission channels or for the amplification, modulation, regeneration, testing, or balancing of control of signals transmitted over communications transmission channels. Examples of circuit equipment in general can be found at 47 C.F.R. § 36.126 (a).

[39] Alascom estimates the frozen circuit equipment factor at about 86%. Response of PTI to Questions of the State Members of the Alaska Joint Board, October 4, 1991, Volume 1, Tab 10 at 5-1.

[40] Alascom Comments December 18, 1992 at 5-13, 46; Attachment B, 23-27; Alascom Reply Comments January 18, 1993 at 12, 25; AT&T Comments, December 18, 1992 at ii, 9-12; AT&T Reply Comments, January 15, 1993 at 4.

[41] Alascom Comments, December 18, 1992 at 11.

[42] ATA Comments, December 17, 1992 at 9; GCI Comments, December 18, 1992 at 22; MCI Comments, December 18, 1992 at 5; UUI Comments, December 18, 1992 at 1; State of Alaska Comments, November 13, 1992 at ii, 22; State of Alaska Reply Comments, January 15, 1993 at 4.

[43] UUI Comments, December 18, 1992 at 2.

compete in the interstate market. In addition, it could also promote competition in the intrastate market by assuring that other carriers would not be required to compete against Alascom's intrastate rates based on an assignment of only 14% of costs to the intrastate jurisdiction under the separations rules.

44. A 75% allocator would be more consistent with the character of Alascom's costs than the current 86% allocator. Alascom's satellite costs, which are a uniquely significant portion of its circuit equipment costs, are not mileage-sensitive in nature. Therefore, the current mileage-based factor does not lead to a cost-based allocation of this investment. We recognize as well, however, Alascom's use of microwave systems, the costs of are mileage sensitive. Alascom owns or leases microwave facilities throughout the southeastern Alaskan panhandle, along the Alyeska Pipeline, and from Fairbanks through southcentral Alaska linking major population centers.[44] Thus, we propose that we not use a wholly non-distance-sensitive allocator for Alascom's circuit equipment costs, either.[45] On balance, our analysis suggests that a more accurate recognition of the non-distance sensitive nature of satellite costs would warrant a reduction in the circuit equipment allocation factor to 75%. However, the reduction to 75% appears to be the maximum decrease to the interstate circuit equipment factor possible without compromising the goals we have identified.[46] We note that any future changes to Alascom's separations factor for circuit equipment would be considered by a Joint Board.

45. Given the features of our proposed transition plan designed to protect against immediate intrastate cost shifts, we tentatively conclude that a transition to a 75% frozen allocator would not cause an undue increase in intrastate rates. Further, as discussed, it would substantially promote our goal of a more competitive market for interstate and intrastate Alaska communications. We believe that a 75% allocator would best achieve our goals of promoting competition and protecting intrastate ratepayers.

46. Accordingly, we tentatively recommend that the Commission amend the separations rules to establish a 75% frozen allocator for Alascom's circuit equipment phased-in over a transition period as discussed in Section VI. We seek comments on this recommendation.[47]

B. Allocation Factor for UUI Circuit Equipment

47. UUI is a small independent local exchange carrier operating in many of the remote areas of Alaska.[48] As a result of a past Commission decision, UUI was allowed an opportunity to obtain a one-half interest in a number of the earth stations that were then owned and operated by Alascom.[49] Historically the costs of UUI's joint venture earth stations were allocated between the jurisdictions based on Alascom's (not UUI's) separations factors.

48. We believe that for consistency in treatment, UUI should employ the same separations factor as Alascom for its portion of the earth station costs. We believe that the change in allocation factor to UUI would not prove a hardship since we also recommend that UUI be allowed to phase-in the separations factor change and to participate in the Alaska Fund described in the transition section of this order. We seek comments on this aspect of our recommendation.

VI. TRANSITION MECHANISMS

A. JSA Termination

49. Taken as a whole, our recommendation is designed to create an open and competitive market in Alaska without threatening intrastate rates or disrupting interstate toll service and integrated rates. It is, however, desirable to provide a transition period for Alascom during which it can focus on the network and administrative reorganizations that will be necessary when it no longer is assured full revenue requirement recovery, as it is now under the JSA. A transition period also would provide the time required for development of appropriate Alascom tariffs and for implementation of certain transition mechanisms. Therefore, we propose that the JSA be continued for a period of three years after the Commission approves the new market structure, including effective transition mechanisms. We believe that this, together with the implementation of other transition mechanisms we propose in this Order, will also give Alascom a reasonable opportunity to adjust and reduce its operating costs to a level that will enable it to offer competitively priced Alascom Common Carrier Services and to offer competitively priced interstate MTS if it eventually chooses to engage in that business.[50]

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[44] Numerous situations also exist where either microwave or radio links are employed to connect outlying villages with nearby earth stations.

[45] Various parties have recognized that if Alascom employed a non-mileage based factor similar to the LEC separations factor, its interstate circuit equipment allocator would decrease. This is demonstrated by the data filed by PTI where it is shown that when applied to Alascom, the non-distance-sensitive allocator currently used by LECs yields an allocation of approximately 62% to the interstate jurisdiction. *See* Second Set of Responses from PTI, Inc. to Questions of the State Members of the Federal-State Joint Board (CC Docket No. 83-1376) Posed Apr. 21, 1992 (Response dated May 8, 1992), Vol. 1, Tab i. Sixty-two percent is the average of the interstate percentages of relative use forecast by PTI for the years 1992 to 1997.

[46] We invite the parties to submit their estimates of the intrastate jurisdictional cost increase resulting from the change in frozen allocator from 86% to 75%.

[47] Changes in the separations factors applicable to other carriers are beyond the scope of this Joint Board. Consequently, our recommendation is applicable only to circuit equipment of Alaska carriers. Alaska is the only state where an extensive satellite system exists for the provision of interstate and intrastate long distance services. This separate treatment for Alaska would reflect the unique characteristics of the Alaska market.

[48] The Alaska Public Utilities Commission in its Annual Report to the Legislature for 1992, indicates that UUI had approximately 3,444 access lines and net plant of about $17 million during 1991. The Annual Report lists UUI as typically serving small Alaskan communities such as Akiak, Beaver, Chuathbaluk, and Eek.

[49] UUI's participation in the joint venture began in November, 1986. Comments of UUI, April 13, 1989 at 1.

[50] Alascom has vigorously argued that the services it would provide to IXCs after termination of the JSA should be classified as "access" services of the nature that local exchange carriers provide to IXCs. (*See* Alascom Comments, December 18, 1992 at 10-13 and Alascom Reply Comments, January, 15, 1993 at 23-29). Whether Alascom exits the interstate MTS market or not, Alascom will not become a local exchange carrier by virtue of elimination of the JSA.

50. We seek comments on our tentative recommendation to continue the JSA for a three-year period as part of our market structure and on whether any changes to the terms of the JSA are necessary to accomplish our goals and implement the recommended market structure. We are also interested in comments regarding the feasibility of terminating the JSA immediately upon the implementation of our market structure proposal and associated transition mechanisms and how this would affect the technical aspects of our tentative recommendation.[51] We seek comments as well on all other transitional mechanisms proposed in Section VI.

B. Alascom Common Carrier Services

51. As previously stated, we tentatively recommend that Alascom be required to make its Alascom Common Carrier Services available to all IXCs pursuant to tariff, concurrent with termination of the JSA.[52] Even though the reduction of the current frozen allocator to the 75% level will occur over a 10 year period (as described below), Alascom would begin using the 75% level immediately under the JSA and in its future tariff filings. The difference between the 75% and the transitional level of the allocator would be recovered through the Alaska Fund as described below.

C. Separations Factor Transition

52. Our tentative recommendation that Alascom separate its costs by using the 75% circuit equipment allocator will give AT&T an immediate reduction in its cost of doing business in Alaska under the JSA that would shift revenue requirements to the intrastate jurisdiction. The small size of the Alaskan customer base from which this cost shift must be collected[53] makes it appropriate that this cost shift be phased-in over time. Consequently, we recommend that the interstate circuit equipment separations factor be reduced from current levels to 75% over 10 years. During the first three years of that 10-year period, the interstate separations factor would remain at current levels (about 86%). During the remaining seven years, the interstate separations factor would gradually be reduced to 75% in equal increments. These reductions simplify and facilitate the accelerated cost recovery aspect of our recommendation as discussed below. It would also reduce the level of unpredictability in the transition to the new market structure, thus easing development of the tariff system that is to replace the JSA and ensuring better control over all aspects of the transition. Perhaps most importantly, the gradual change in separations factors, co-joined with accelerated cost recovery, would tend to mitigate any cost shifts to the intrastate jurisdiction and reduce rates in both jurisdictions.

D. Alaska Fund

53. As previously stated, during the transition, the proportion of circuit equipment costs allocated to the interstate jurisdiction for Alascom should initially continue at the current frozen level and then be reduced to 75%. However, in balancing the objectives of providing a more competitive market in Alaska and ensuring universal service, we have concluded that the incremental interstate revenue requirement represented by this difference (*i.e.*, 86% - 75%) in jurisdictional allocation should be recovered from all interexchange carriers, not just AT&T which would continue to be the primary purchaser of Alascom's tariffed services under the recommended transitional purchase obligation. Specifically, we propose that 75% of Alascom's total circuit equipment costs be recovered through Alascom's Common Carrier Services rates and the remaining amount, represented by the difference between 86% (*i.e.*, current interstate levels) and 75%, be recovered from a special temporary fund called the Alaska Fund, with charges assessed against IXCs providing service in the United States.

54. We tentatively recommend that the Alaska Fund be administered by the NECA[54] and that NECA file, on behalf of Alascom and UUI, a tariffed charge that will be applicable to, and assessed against, IXCs that contribute to the Universal Service Fund. We recommend that the charge be computed by NECA on a monthly basis by dividing one-twelfth of the projected annual Alaska Fund revenue requirement[55] by the number of presubscribed access lines in the United States.[56] Beginning on January 1, 1994, NECA would bill and collect the charge, and disburse on a monthly basis the revenue associated therewith, less reasonable administrative expenses, to Alascom and UUI.

55. We further tentatively recommend that Alascom, UUI, and the interexchange carriers that will be billed by NECA, be required to provide to NECA the data necessary

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[51] For example, what modifications, if any, to the JSA would be needed to prevent duplication of cost recovery as a result of revenues from other sources (e.g., the Alaska Fund, Alascom tariffs) under our proposal. In addition, we note that it may well be possible to implement our transition mechanisms at an earlier date and terminate the JSA at that time.

[52] Alascom states it "has no objection to reselling its services to other IXCs." Alascom Comments, December 18, 1992 at 30.

[53] There are only about 269,000 main access lines statewide in Alaska. APUC Annual Report to the Legislature, Statistical Information, Fiscal Year 1992, 63.

[54] We further tentatively recommend that NECA be required to establish a separate, wholly owned corporation to administer this fund; and that no employee, agent, or director of NECA who is directly or indirectly affiliated with, or otherwise has any financial interest in, Alascom or its affiliates (including Pacific Telecommunications, Inc.) or UUI or its affiliates shall be involved, in any way, with the administration of this fund. We further recommend that, when the Alaska Fund terminates, the subsidiary corporation be dissolved and NECA be required to distribute all net assets remaining from the operation of that corporation to interexchange carriers who have contributed to the Alaska Fund. We further recommend that the distribution to each carrier be directly proportional to payments to the Alaska Fund and, upon dissolution, that NECA be required to provide independently audited statements of the operations of the subsidiary to Alascom, UUI, and to each interexchange carrier that made a payment to the Alaska Fund. Unless the context indicates otherwise, the term "NECA" hereafter is synonymous with the subsidiary corporation.

[55] The projected Alaska Fund revenue requirement would include a projection of NECA's expenses of administering the Fund.

[56] Our intention in this regard is that Alaska Fund support obligations be apportioned among interexchange carriers in the same proportions that are used for Universal Service Fund obligations.

to compute the charge. In the case of Alascom and UUI, these data would include account balances in the total circuit equipment category and would also include all associated other expenses, the revenue requirement total, the amount of revenue requirement to be recovered from the Fund, and well developed support materials that document the revenue requirement calculations.[57] Required information concerning the Alaska Fund would be filed with the NECA on June 30 and December 30 of each year, except for the first such submission, which would be filed on December 1, 1993.

56. The temporary Alaska Fund would be computed based upon the existing circuit equipment allocator for the first three years after the Commission adopts a final order establishing transition mechanisms. During the next seven years, Alascom's frozen circuit equipment allocator would start to phase-down to 75%.[58] The reduction in the circuit equipment factor would correspondingly reduce the Alaska Fund until the Fund is zero. The amount of monies phased-out of the Alaska Fund would be recovered through the state jurisdiction. We would expect that the anticipated intrastate cost shift would be minimized by Alascom through improved efficiencies, cost cutting, increased demand, and accelerated cost recovery.

E. Accelerated Cost Recovery

57. As more fully explained below, we have concluded that an accelerated cost recovery mechanism is necessary to help reduce the cost shifts to the intrastate jurisdiction that might result under the proposed new market structure. Consequently, we have included this transition mechanism as an integral part of our tentative recommendation.

1.a. State Members' Plan

58. The State Members' Plan stated that Alascom built its network while competition did not exist and at a time when regulators' primary policy objective was to create an interexchange network capable of providing dependable and high quality service to remote locations in Alaska under adverse conditions. After competition was introduced to the Alaska market, the JSA continued to insulate Alascom from competitive pressures by providing for a cost-plus reimbursement mechanism. To the extent that competitors' operations were developed without the influence of the cost-plus reimbursement from the JSA, without a historical requirement to build the first network under regulatory oversight, and without a requirement to serve statewide, those competitors may offer more attractive rates to AT&T and other interexchange carriers, thereby enticing interexchange carriers to bypass Alascom.

59. To address these concerns, the State Members' Plan proposed that Alascom would be required to accelerate depreciation of its interstate and intrastate plant to reduce, but not eliminate, its rate base and associated expenses. The State Members reasoned that this would significantly reduce the threat of stranded plant and extreme cost shifts to the intrastate jurisdiction. Funding for the additional accelerated depreciation was to come from AT&T through three annual payments of at least $50 million each during the transition period. These payments, and the associated accelerated depreciation expense, would be an exclusive obligation of AT&T. AT&T funding of Alascom's accelerated cost recovery was designed to help minimize cost shifts to the intrastate jurisdiction. The accelerated depreciation would also reduce AT&T's Alaska costs for services it purchases from Alascom in the future and would place Alascom in a more effective competitive posture.[59]

1.b. Positions of Parties

60. In its comments on the Master Agreement, the State of Alaska also suggested that an asset write-down would be an important element for meeting the policy objectives of jurisdictional revenue requirement neutrality and universal service.[60] The State of Alaska reasoned that the write-down would be justified by the increase in competition and the demise of the JSA, both of which would make Alascom's interexchange assets less productive and less valuable.

61. In its market structure proposal, GCI had proposed that Alascom should accelerate depreciation of its interstate assets.[61] GCI stated that the use of accelerated depreciation would dramatically reduce Alascom's costs while compensating Alascom for its investment made in reliance upon the JSA.[62]

62. Alascom and AT&T each found the proposed accelerated cost recovery for Alascom to be objectionable. Alascom first argued that it is arbitrary and capricious to justify this action on the basis that there are disincentives for economic efficiency.[63] According to Alascom, investments must first be found to have been imprudent as a prerequisite to compelling a write-down.[64] Second, it argued that the State Members' Plan would make Alascom incapable of providing universal service that meets present standards and quality.[65] Alascom also stated that the constitutional claims of confiscation that it raised with respect to GCI's proposed write-down applied with equal force to the State Members' Plan.[66] Finally, it challenged the legal basis for applying accelerated depreciation to both its intrastate and interstate plant.[67]

63. AT&T claimed that the requirement that it alone fund the accelerated cost recovery raised a serious issue of unconstitutional taking, given its belief that under the JSA

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[57] For the purpose of computing this revenue requirement, we recommend that Alascom be required to utilize the lesser of the authorized interstate rate of return applicable to exchange carriers (currently 11.25%) or the intrastate rate of return authorized for switched traffic in Alaska unless Alascom, by clear and convincing evidence, is able to justify a different rate of return for its interstate operations.

[58] Beginning January 1, 1997, the current allocator would be reduced at the annual rate of one-seventh (1/7) of the difference between the current allocator and seventy-five (75) percent.

[59] State Members' Plan, November 5, 1992 at 20-21.

[60] These comments were offered in response to the MA. Alaska Comments, April 20, 1992 at 30-31.

[61] GCI Proposal, October 2, 1992 at ii.

[62] *Id.* at 2.

[63] Alascom Comments, December 18, 1992 at 41-42.

[64] *Id.* at 42; Alascom Reply Comments, January 15, 1993 at 14 n.14.

[65] *Id.* at 5-6.

[66] Alascom Reply Comments, January 15, 1993 at 14 n.14.

[67] Alascom Comments, December 18, 1992 at 42, Attachment B at 22-23.

it had already paid for much of the plant that would be written down.[68] Further, AT&T posited that it is inequitable to place this financial responsibility on AT&T, given that Alascom alone made investment decisions without any input from AT&T. AT&T also contended that the proposal would fall short of accomplishing the intended goals of accelerated cost recovery. Last, AT&T questioned the legal basis for compelling the use of accelerated cost recovery to Alascom's interstate and intrastate plant.[69]

64. GCI disputed the claims made by Alascom and AT&T. First, GCI argued that Alascom's calculations of the financial impact of the $150 million accelerated cost recovery were flawed because they inaccurately and improperly assumed the elimination of the frozen allocator for separating circuit equipment. GCI also noted that the accelerated cost recovery was designed to reduce, and not totally eliminate, Alascom's costs. Consequently, GCI stated that there could be some intrastate cost impact arising from the new market structure that was not mitigated by the accelerated cost recovery. GCI stated that the payments to fund accelerated cost recovery should not be viewed as related to the JSA, since termination of the JSA could be ordered via regulatory action without any concomitant compensation. If anything, in GCI's view, the payments should be considered as a reward to Alascom for any conceivable reliance interest it may have in the JSA. As to the requirement that AT&T fund the accelerated cost recovery, GCI stated that such an action would be fair in light of the enormous economic and operational benefits conferred on AT&T as a result of the JSA termination.[70]

2. Discussion

65. Our tentative recommendation would allow AT&T to achieve its ultimate objective of serving Alaska through its own facilities or in any other manner it chooses. However, we recognize that if AT&T were to immediately cease using Alascom's facilities, it could result in a significant increase in the intrastate revenue requirement. Cost shifts to the intrastate jurisdiction in excess of the amount resulting from the reduced interstate circuit equipment allocator would raise significant questions with respect to achievement of our revenue requirement neutrality goal. Therefore, we have concluded that an accelerated cost recovery mechanism should be used to ameliorate any cost shift as well as reduce Alascom's costs so that Alascom may better adapt to the proposed new market structure.

66. The arguments raised by AT&T and Alascom in opposition to the proposal for accelerated cost recovery funded by AT&T appear to have little merit. Alascom's argument that there must first be a finding of imprudence before accelerated cost recovery could be ordered is not accurate. Accelerated cost recovery could be implemented, for example, by prescribing higher depreciation rates and shortened service lives. The authority to accelerate cost recovery through depreciation rates, service lives, and charges for providing common carrier communication services has been given to the Commission and the Alaska Public Utilities Commission. The exercise of that authority presumes that the associated investment was prudent; there is no legal basis for approving recovery of depreciation expense for imprudent investment.

67. Not only is accelerated cost recovery through depreciation within the authority of the Commission and the Alaska Public Utilities Commission but also may well be justifiable under the circumstances. A decision to terminate the JSA is likely to significantly affect Alascom's network and operations plant, and thus could warrant a re-examination of the prescribed depreciation rates in light of such a development.

68. In our view, Alascom's concerns about the financial impairment that it would experience with accelerated cost recovery appear to be misplaced. Any financial impairment that Alascom perceives relates not to the use of accelerated cost recovery but, instead, to the elimination of the guaranteed revenue source (*i.e.*, AT&T) to which it has likely grown accustomed under the JSA.[71] However, the changed circumstances in the Alaska market no longer make it feasible to perpetuate the JSA.

69. Alascom's constitutional claims of confiscation raised with respect to GCI's proposed accelerated cost recovery plan also are inapplicable to the State Members' proposal. Whereas GCI's proposal contemplated the funding of the accelerated cost recovery from payments made to Alascom from AT&T under the MA, the State Members' plan clearly stated that AT&T's accelerated cost recovery payments would be separate from, and in addition to, any other payments that AT&T must make.[72] In that regard, no argument can be sustained, therefore, that Alascom would be required to apply one payment to two purposes. Moreover, Alascom's argument rests on the improper assumption that it has a property interest in a continuation of the JSA. While the MA was structured to provide contractual compensation in conjunction with the termination of the JSA, we are not persuaded that Alascom can rightfully demand that this compensation be part of regulatory action terminating the JSA.

70. Alascom has been on notice since the inception of this proceeding that the arrangement requiring AT&T purchase of Alascom's services, along with other benefits under the terms of the JSA, was not likely to be permanent.[73] Alascom has also been on notice that AT&T has been an unwilling party to the JSA.[74] In fact, AT&T previously filed pleading requesting termination of the JSA, and argued that the JSA was violative of Section 201 of the Communications Act.[75] Clearly, the JSA continues only through regulatory assent. Any claim by Alascom of a right to the continuation of the JSA, as implied in its constitutional challenge, is not borne out by the record.[76]

71. AT&T's and Alascom's challenge to applying accelerated cost recovery for plant that provides both interstate and intrastate services cannot lie under the

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[68] AT&T Comments, December 18, 1992 at 6.
[69] AT&T Reply Comments, January 15, 1993 at 2.
[70] GCI Reply Comments, January 15, 1993 at 9.
[71] Under the JSA, AT&T is required to compensate Alascom for its interstate expenses, including accelerated depreciation expenses.
[72] State Members' Plan, Nov. 5, 1992 at 20 & n.18.
[73] AT&T Comments, December 18, 1992 at 6.
[74] AT&T Supplemental Comments, March 12, 1990 at 5-6.
[75] *See* AT&T Petition for a Lawful Interim Division of Charges, November 6, 1987.
[76] *Id.* at pp. 5-8.

Communications Act and Title 42 of the Alaska Statutes. For example, the FCC can prescribe depreciation charges for Alascom under the Communications Act,[77] and take cognizance of those charges in determining whether Alascom's interstate rates are unjust, unreasonable, or unreasonably discriminatory.[78] Similarly, the Alaska Public Utilities Commission is authorized to make a congruent determination for intrastate purposes.[79]

72. Moreover, Alascom and AT&T may conclude independently that it is in the best interest of the shareholders of both companies if Alascom were voluntarily to propose to reduce the value of its regulated telecommunications common carrier assets[80] in exchange for a lump sum payment, or series of payments. Such a proposal, if approved, would not only reduce Alascom's costs of providing service to intrastate ratepayers in Alaska but would also reduce the cost of providing interstate MTS to and from the State of Alaska and simultaneously make Alascom a more competitive source of supply to AT&T and other intrastate and interstate interexchange carriers.

73. In light of the considerations raised in this section, it is evident that some direct method to reduce Alascom's costs of operation through accelerated cost recovery must be an integral part of any transition to a new market structure. Accordingly, we direct AT&T and Alascom to provide either joint or separate implementation plan(s) discussing methodologies that might be employed to resolve this issue in a way that satisfies the concerns set forth above.[81] Without an acceptable solution to the accelerated cost recovery issue, it is unlikely that the Joint Board's five goals can be achieved. In that eventuality, this Joint Board is unlikely to recommend termination of the JSA with the other terms and conditions that have been previously described in this order.

F. AT&T Purchase Obligation

74. As previously stated, the potential for unforeseen jurisdictional revenue requirement shifts could be realized if AT&T immediately stopped using Alascom upon termination of the JSA. To further reduce this potential, we recommend that AT&T be required to purchase Alascom Common Carrier Services for all of AT&T's Alaska interstate MTS traffic during the first three years of transition to a new market structure.[82] In the four subsequent years, after other transition mechanisms have been implemented, we recommend that this obligation be lessened and ultimately eliminated, by reducing the traffic that AT&T will be required to place on Alascom's facilities. This reduction would occur in equal increments or on a schedule proposed by the parties and accepted by the Commission. At the conclusion of the seventh year of transition, AT&T would no longer be obligated to use any Alascom facilities and may choose to self-provision or to use the services of another carrier or carriers to satisfy all its requirements for providing Alaska service. We have tentatively concluded that this condition is necessary to stave off the potential jurisdictional revenue requirement shift that could occur should AT&T immediately stop using Alascom's facilities.[83]

VII. MISCELLANEOUS

A. Tariffs, Leases, and Contracts

75. Alascom must file interstate tariffs for its Alascom Common Carrier Services and its MTS with the Commission. We propose to recommend that any contracts or leases for use of Alascom or AT&T interstate services also must be filed for review by the Commission.

B. Alaska Spur

76. We further propose that Alascom shall make public and have on file with the Commission all contracts and agreements for interstate service on the Alaska Spur, including any technical standards that may be incident

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[77] 47 U.S.C. § 220.

[78] 47 U.S.C. §§ 201-202.

[79] Alaska Stat. § 42.05.471 (1992).

[80] We recommend that any accelerated cost recovery would apply to regulated plant used to provide service to the public; plant dedicated to providing service to specific customers and non-regulated plant would be excluded. Alaska Spur facilities would not be subject to accelerated cost recovery.

[81] AT&T and Alascom are requested to develop the necessary accounting procedures to implement this proposal. The implementation proposals should also include any special conditions, timing considerations, and waivers necessary to fully implement all aspects of the Joint Board's tentative recommendation.

[82] We have tentatively concluded that, pending termination of the JSA, AT&T should be obligated to carry all of its Alaska interstate MTS traffic on Alascom facilities as it does today. Thereafter, the amount of AT&T's traffic that must be placed on Alascom's system would decrease from 100% to 0% in four equal annual increments from the volume of MTS traffic that AT&T carried during the third year. However, we invite comment on whether AT&T's obligation to use Alascom should be limited during any (or all) of these years, such as to a given percentage of AT&T's current traffic on the Alascom network and, if so, what base period should be used for this purpose.

[83] ATA and GCI comments to the State Members' Plan supported a must purchase requirement placed on AT&T. *See* ATA Comments, December 17, 1992 at 7-8; GCI Comments, December 18, 1992 at 20-22. ATA noted that this condition would guard against stranding significant Alascom investment and shifting jurisdictional cost shifts by as much as $25.7 million per year if AT&T bypassed Alascom facilities for terminating and originating interstate minutes for Anchorage, Juneau and Fairbanks. The State of Alaska recommended that after a five-year transition during which all of AT&T's interstate traffic would be carried on Alascom's network, AT&T would continue to be required to place 10% of its traffic on Alascom's network. *See* State of Alaska Comments, November 13, 1992, at iv. MCI and AT&T objected on the basis that Alascom should not be insulated against the potential for AT&T bypass and the concomitant stranded investment that would occur. *See* MCI Comments, December 18, 1992 at 2, 5; AT&T Comments, December 18, 1992 at 4-9, 12-3. Our principal reason for imposing this obligation on AT&T relates to universal service and jurisdictional revenue requirement neutrality and not protection of Alascom against the effects of competition. In fact, we have proposed that this obligation be imposed for only a limited time to allow competition to evolve in the Alaska market as expeditiously as possible without its evolution impeding achievement of our goals of universal service and jurisdictional revenue requirement neutrality.

thereto. All contracts, agreements, and standards shall be subject to review by the Commission and to other requirements deemed applicable by the Commission.[84]

C. Monitoring

77. We tentatively recommend that the Commission obtain information to monitor progress in achieving the market structure described in this order. We tentatively conclude that most of the information needed to monitor progress in the Alaska market can be obtained from existing sources. For example, the Alaska Public Utilities Commission has information about intrastate rates in Alaska, and the CC Docket 80-286 Joint Board publishes a Comprehensive Monitoring Report on Telephone Service, including information on subscribership and penetration levels. In addition, as part of our proposed market structure proposal, NECA would be required to file tariffs for the Alaska Fund that would be useful in monitoring the charges to carriers from the Alaska Fund. To the extent that there are existing reporting requirements that provide the types of information needed to monitor the proposed market structure, it is possible that no new reporting requirements would be required. We request comments on this aspect of our proposal.

78. Parties providing comments on a monitoring program for the Alaska market structure should respond regarding: costs and benefits of establishing a monitoring reporting requirement, parties that should be required to report, information that should be included in the reporting requirement, frequency of reporting, and relative importance of specific information for monitoring the Alaska market. Parties should also comment on the availability of the recommended reporting items from existing reports.

VIII. AT&T PETITION TO TERMINATE THE JOINT SERVICE ARRANGEMENT

79. On March 31, 1993, AT&T filed a Petition proposing a "Consumer Benefit Plan" to replace the JSA. The AT&T Consumer Benefit Plan proposes that the JSA be terminated immediately upon all regulatory approvals. At that time, AT&T would: 1) directly provide interstate MTS to and from Alaska at nationwide integrated rates; 2) eliminate bands 10 and 11 from its interstate tariff, thereby offering lower rates to Alaska interstate callers; 3) make available services and optional calling plans that Alascom does not currently offer; 4) construct a new fiber optic submarine cable between Alaska and the Lower 48 states and other facilities necessary to provide service; and 5) provide intrastate switched services in Alaska. AT&T states that its basic intrastate MTS rates would be equal to or lower than the lowest current Alascom or GCI standard MTS rates. AT&T would pledge not to raise its initial MTS rates for five years, except to pass through state-approved increases in intrastate access charges.

80. AT&T's Section 214 application for authority to provide service to and from Alaska indicates that initially AT&T would acquire capacity from carriers under tariff, supplemented as necessary by leasing or purchasing facilities.[85] Thereafter, AT&T states that it would construct the undersea cable system from the Pacific Northwest through Juneau to a point near Anchorage, and it may construct other facilities in Alaska substituting for, or adding to, the leased or purchased facilities. Until second stage facilities are in place to any given point, AT&T states that it would continue to obtain distribution and access services from Alascom and Alaska local exchange carriers under tariff. AT&T states that it would agree to subject itself to 214 requirements for withdrawal from providing southbound service from Alaska, even though it does not believe it should be subject to such requirements, and in addition to northbound service for which it is also subject to 214 requirements. AT&T's proposal assumes no change in separations. AT&T states that it would purchase Alascom services to originate and terminate calls to the bush, because of the prohibition against construction of duplicate earth stations in rural Alaska. AT&T states that it would begin to provide southbound service without preexisting customers, *i.e.*, AT&T would not purchase Alascom's interstate customer list.

81. AT&T states that it would implement its Consumer Benefit Plan if three conditions were granted: 1) prompt termination of the JSA; 2) approval of AT&T's Section 214; 3) an order or assurance that Alascom will file nondiscriminatory interstate tariffs to permit AT&T and other IXCs to use Alascom's existing facilities to provide service from their Alaska POPs to the points served by Alascom including the Bush; and 4) that Alascom's rates for providing such service to the Bush were based on direct costs.

IX. EX PARTE RULES

82. This proceeding involves broad policy issues and shall be treated as non-restricted for purposes of the Commission's *ex parte* rules. See 47 C.F.R. §§ 1.1200(a), 1.1206. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

X. REGULATORY FLEXIBILITY ACT

83. We certify that the Regulatory Flexibility Act of 1980 does not apply to this proceeding because the proposed rule amendments, if promulgated, would not have a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. Alascom and AT&T, two of the three major entities that would be directly subject to the proposed tentative decision, are large corporations or affiliates of large corporations. Interexchange carriers that might be otherwise affected by the tentative decision are also large corporations or their affiliates. UUI a provider of earth station facilities for the Alaska bush, is not considered a small entity because it is a monopoly provider of local exchange service. The Secretary shall send a copy of this Tentative Recommendation and Order Inviting Comment, including the certification, to the Chief Counsel

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[84] *See* Alascom Inc. Section 214 Application, Memorandum Opinion and Order, WPC - 6520, May 13, 1991.

[85] AT&T's Section 214 application to service Alaska will be the subject of a separate proceeding instituted by the Commission.

for Advocacy of the Small Business Administration in accordance with ¶ 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq* (1981).

XI. IMPLEMENTATION PLAN AND COMMENT DATES

84. This tentative recommendation and order requesting comments is intended to present, and seek comments on, the Joint Board's tentative recommendation on how to resolve the outstanding issues in this proceeding and provide a new interstate market structure for Alaska that is consistent with the objectives previously identified by this Joint Board. Accordingly, we require that AT&T and Alascom submit either a joint or separate detailed plan(s) describing how they would implement the proposed market structure specified in this tentative recommendation on or before June 7, 1993.

85. Interested parties may file individual or consolidated comments, and/or reply comments with respect to: (1) the Joint Board tentative recommendation; (2) the implementation plan filed by AT&T and Alascom in response to this tentative decision; and (3) the AT&T Consumer Benefit Plan. Comments shall be filed on or before **June 28, 1993** and replies thereto on or before **July 12, 1993.** An original and five copies should be filed with the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Additional copies should be sent to the following: six copies to Peggy Reitzel, Common Carrier Bureau, Federal Communications Commission, 1919 M. Street, N.W., Washington, D.C. 20554; and one copy to ITS, Inc. the Commission's contractor for public records duplication, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800. The AT&T petition and filings in response to this Tentative Recommendation and Order Inviting Comment, will be available for inspection and photoduplication in Room 239, 1919 M. Street, N.W., Washington, D.C. 20554 (which is open from 9:00 AM to 4:30 PM, Monday through Friday). Copies may also be obtained from ITS, Inc.

86. Petitions to reject, comments, informal comments, and replies on AT&T's Section 214 Application to serve the State of Alaska may be filed in the proceeding established to address AT&T's Section 214 application, and not here.

87. Parties should also send copies of filings to the following Alaska Joint Board Members and their staffs: Hon. Bruce Hagen, North Dakota Public Service Commission, State Capitol Building, Bismarck, North Dakota 58505; Hon. Susan M. Knowles, Alaska Public Utilities Commission, 1016 West 6th Avenue, Suite 400, Anchorage, Alaska 99501; Hon. Dean J. "Joe" Miller, Idaho Public Utilities Commission, 472 West Washington, Boise, Idaho 83702; Hon. David Rolka, Pennsylvania Public Utilities Commission, P.O. Box 3265, Harrisburg, Pennsylvania 17105; Lorraine Kenyon, Alaska Public Utilities Commission, 1016 West 6th Avenue, Suite 400, Anchorage, Alaska 99501; Eileen Benner, Idaho Public Utilities Commission, 472 West Washington, Boise, Idaho, 83702; Debra Kriete, Pennsylvania Public Utilities Commission, P.O. Box 3265, Harrisburg, Pennsylvania 17105; Ronald G. Choura, c/o Michigan Public Service Commission, 6545 Mercantile Way, P.O. Box 30221, Lansing, Michigan, 48910; Rowland Curry, Texas Public Service Commission, 7800 Shoal Creek Blvd. Suite 400N, Austin, Texas 78757.

XII. ORDERING CLAUSES

88. ACCORDINGLY, pursuant to Sections, 1, 4, 5, 201-205, 214, 218, 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 155, 201-205, 218, 403, and 410 IT IS ORDERED that this Tentative Recommendation And Order Inviting Comment IS HEREBY ADOPTED to give notice of the tentative recommended decision described herein, and that interested parties may file comments and reply comments on this proposal;

89. IT IS FURTHER ORDERED, pursuant to Sections 1, 4, 5, 201, 202, 205, 218, 403, and 410, 47 U.S.C. §§ 151, 154, 155, 201, 202, 205, 218, 403, and 410, that AT&T and Alascom SHALL FILE, not later than June 7, 1993, either a joint or separate detailed implementation plan consistent with the tentative recommendation of the Joint Board discussed herein;

90. IT IS FURTHER ORDERED that interested parties may file individual or consolidated comments, and/or reply comments with respect to: (1) the Joint Board tentative recommendation: (2) the AT&T and Alascom implementation plan(s) filed in response to this tentative recommendation; and (2) AT&T's Petition to Terminate the Joint Services Agreement. Comments shall be filed on or before **June 28, 1993,** and replies thereto on or before **July 12, 1993.**

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 92-222

In the Matter of

Amendment of the Part 69
Allocation of General Support
Facility Costs

REPORT AND ORDER

Adopted: May 7, 1993; Released: May 19, 1993

By the Commission:

I. INTRODUCTION

1. On October 19, 1992, the Commission released a Notice of Proposed Rulemaking in this proceeding[1] proposing to correct the misallocation of general support facility (GSF) investment and related expenses among the Part 69 cost categories for local exchange carriers (LECs). Specifically, we proposed to modify Section 69.307 of the Commission's rules by deleting the language "excluding Category 1.3."[2] In this Order, based on the virtually unanimous support of commenters, we adopt the proposal presented in the *Notice*.

II. BACKGROUND

2. Section 69.307(b) requires the LECs to apportion GSF investment[3] among Part 69 access categories based on investment in central office equipment, information origination/termination equipment, and cable and wire facilities excluding category 1.3, which is investment in common lines.[4] This rule was adopted in 1987 as part of the proceeding that conformed the Commission's separations rules to its revised uniform system of accounts.[5] The exclusion of common line investment from the formula for allocating GSF investment results in an under-allocation of GSF investment to the common line category and an over-allocation of such investment to other access categories, including special access and switched transport. The misallocated investments are then used elsewhere in the cost allocation process to define how GSF and other expense amounts will be allocated among access categories.[6] This results in additional costs being under-allocated to common line and over-allocated to other access categories.

3. In the special access expanded interconnection proceeding, several parties asserted that Section 69.307 operated to over-allocate costs to the special access category. They urged the Commission to institute a contribution charge for recovery of this subsidy by LECs. The Commission found that the only significant non-cost-based, regulatory support flow affecting special access that warranted a contribution charge was the over-allocation of GSF costs to special access.[7] This misallocation leads to excessively high LEC special access rates, with the potential to undermine the development of competition in the special access market. Instead of establishing a contribution charge, we proposed to amend Section 69.307 to eliminate the misallocation of GSF investment and related expenses.

III. SUMMARY OF COMMENTS

4. In response to the *Notice*, twenty-three parties filed comments and sixteen parties filed reply comments.[8] With one exception, all the parties, which include LECs, interexchange carriers (IXCs), competitive access providers (CAPs), and end users, support the Commission's proposal to modify Section 69.307 of the rules to allocate some GSF investment and related expenses to the common line category.[9]

5. These parties agree with the Commission that the present rule leads to an over-allocation of costs to access categories other than common line, including special access and switched transport. They also agree that the rule change is a step in the right direction and will provide more consistency in the allocation procedures, resulting in more cost-based pricing by the LECs.[10] MFS states that the Commission should adopt the rule change if the Commission determines that the change more closely

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[1] *Amendment of the Part 69 Allocation of General Support Facility Costs*, Notice of Proposed Rulemaking, CC Docket No. 92-222, 7 FCC Rcd 7369, 7494, ¶ ¶ 267-69 (1992) (*Notice*).

[2] 47 C.F.R. Section 69.307.

[3] GSF investment includes such items as land, buildings, computers, motor vehicles, and furniture that support the operations of the carrier.

[4] Category 1.3 is the investment in common lines and is defined in 47 C.F.R. Section 36.154(a).

[5] *Amendment to Part 69 of the Commission's Rules and Regulations, Access Charges, To Conform It With Part 36, Jurisdictional Separations Procedures*, 2 FCC Rcd 6447, 6452 (1987).

[6] *See, e.g.*, 47 C.F.R. Sections 69.309, 69.401(a)(1), 69.401(a)(2), 69.402(b), 69.403, 69.406(a)(1) & (7), 69.408 & 69.411. GSF expenses include those operating costs associated with the GSF investment, such as depreciation, maintenance, and repair.

[7] *Expanded Interconnection with Local Telephone Company Facilities*, Report and Order, 7 FCC Rcd 7437, ¶ ¶ 147-49 (1992) (*Expanded Interconnection Order*), recon., 8 FCC Rcd 127 (1992), pets. for recon. pending, appeal pending sub nom. *Bell Atlantic Corp. v. FCC*, No. 92-1619 (D.C. Cir., filed Nov. 25, 1992).

[8] The parties filing comments and replies in this proceeding are listed in Appendix B.

[9] Ameritech Comments at 2; AT&T Comments at 3; Bell Atlantic Comments at 1; Cincinnati Bell Comments at 2; GSA Comments at 3-4; GTE Comments at 2; GVNW Comments at 1; MCI Comments at 2; MFS Comments at 5; NECA Comments at 2; NYNEX Comments at 2; Pactel Comments at 2; Rochester Comments at 2; SNET Comments at 1; Sprint Comments at 1; JSI Comments at 2; SWBT Comments at 1,4; Teleport Comments at 2; United Comments at 3; USTA Comments at i, 2; US West Comments at 2-3; and BellSouth Reply Comments at 3.

[10] AT&T Comments at 4-6; Ameritech Comments at 2-3; GVNW Comments at 2; MCI Comments at 2-3; NECA Comments at 3; Pactel Comments at 2; JSI Comments at 2; USTA Comments at 3; Teleport Comments at 3-4; BellSouth Reply Comments at 1; and NTCA Reply Comments at 2.

reflects the operation of market forces in a fully competitive market than does the present rule.[11] Most parties, however, consider this to be an interim measure and urge the Commission to undertake a comprehensive review of the access charge rate structure.[12] Rochester states that such a comprehensive review should be undertaken by the Joint Board.[13]

6. Several parties state that correcting the allocation of GSF will reduce the annual costs assigned to special access and switched transport.[14] Using 1991 data for the LEC industry, USTA estimates cost shifts to the common line category from other access categories as follows: $275 million from special access; $492 million from switched transport; $342 million from local switching; and $5 million from interexchange.[15] Using 1991 ARMIS data for Tier 1 LECs other than the Puerto Rico Telephone Company (PRTC), AT&T estimates that costs will be shifted to the common line category from other access categories as follows: $223 million from the special access category; $763 million from traffic sensitive categories; and $4 million from the interexchange category.[16] AT&T states that this would increase the subscriber line charge (SLC) revenues by only 3.6 percent, and switched access cost by less than 0.2 percent.[17] Bell Atlantic estimates that the increase in total switched access costs will be less than one-half of one percent and that less than five percent of the increase in its SLC revenues will come from residential and single line business SLCs (hereinafter referred to as residential SLCs).[18]

7. No party opposes treating the reallocation of GSF costs as an exogenous cost change under our LEC price cap rules,[19] although MCI supports giving the LECs a waiver of Section 61.45(d) because it believes the Commission's rules on exogenous price cap changes do not encompass such cost reallocations.[20] Price cap LECs argue that rate of return LECs will be able to increase their common line revenue requirement, and that, unless price cap LECs are allowed to treat the cost shifts as exogenous, the rule change will not address the misallocation within the price cap structure.[21] Teleport argues that the Commission should use a uniform "Rate Adjustment Factor" (RAF) to adjust LEC price cap indexes and bands to ensure equitable distribution among the various service categories of the benefits from the cost reallocation resulting from the rule change.[22] MFS argues that because the rates for DS1 and DS3 services have been reduced significantly since price cap regulation was instituted for the LECs, those services do not recover as much of the GSF over-allocation as do other special access services.[23] MFS therefore proposes requiring uniform adjustments to all special access rate elements except the DS1 and DS3 rate elements, which it proposes should only be adjusted downward by 70 percent of the adjustment for other access categories to reflect the fact that DS1 and DS3 rates have been reduced more than other special access rates.[24] The price cap LECs all oppose any variation from the general policies applying to the implementation of exogenous cost changes under price caps.[25]

8. The DC PSC, the only party opposing the rule change, argues that the rule change would increase the SLC for District of Columbia ratepayers and could have a detrimental impact on universal service within the District. The DC PSC states that the penetration rate in DC fell from 96.1 percent in March 1984 to 90.3 percent in March 1992. The DC PSC argues that further SLC increases will exacerbate the significant decline in the DC telephone penetration rate.[26] In reply, several commenters, including LECs, IXCs, and end users, argue that there is no evidence to show a correlation between telephone penetration and the rise in SLC rates.[27] USTA asserts that the proposed rule change will not frustrate the objective of maintaining universal telephone service. The DC PSC advocates a contribution charge to recover the over-allocation of GSF to special access to support universal service and give competitors in the special access market a level playing

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[11] MFS Comments at 5. On March 23, 1993, MFS filed a petition seeking deferral of any Commission action in this proceeding until the Common Carrier Bureau completes its inquiry into the reasonableness of LEC special access volume and term discounts. *Expanded Interconnection Order*, 7 FCC Rcd at 7463, ¶ 200. Four LECs have opposed the MFS petition.

[12] Bell Atlantic Comments at 4; BellSouth Comments at 3; Sprint comments at 3; NYNEX Comments at 5; Rochester Comments at 8; Pactel Comments at 5; and USTA Comments at 3, n.9.

[13] Rochester Comments at 4.

[14] AT&T Comments at 3-5; NYNEX Comments at 2; Pactel Comments at 5; Rochester Comments at 2; SNET Comments at 3; US West Comments at 4; and GSA Reply Comments at 9.

[15] USTA Comments at Attachment 1, using data from 646 study areas. Company-specific estimates in the record are generally consistent with these relative shifts.

[16] AT&T Comments at 3-4.

[17] *Id.* at 6. *See also Ex parte* letter to Donna R. Searcy, Secretary, FCC, from Richard N. Clarke, Regulatory Policy Analysis, Government Affairs, AT&T, filed Dec. 16, 1992.

[18] Bell Atlantic Comments at 3.

[19] Ameritech Comments at 3; Bell Atlantic Comments at 2; BellSouth Comments at 5; NYNEX Comments at 2; Pactel Comments at 3; SWBT Comments at 6; GTE Comments at 2; Rochester Comments at 3; SNET Comments at 3; United Comments at 3-4; and USTA Comments at 3.

[20] MCI Reply Comments at 5-6; accord BellSouth Comments at 5 (supporting a waiver of Section 61.45(d)).

[21] Bell Atlantic Comments at 2; BellSouth Comments at 3; NYNEX Comments at 3; and Pactel Comments at 3.

[22] Teleport Comments at 3-5.

[23] MFS Comments at 6. MFS says that the Commission stated in the *Expanded Interconnection Order* that the different special access service categories probably bore a different level of support of GSF costs. 7 FCC Rcd at 7438, ¶ 148.

[24] MFS Reply Comments at 3.

[25] *See, e.g.*, Ameritech Reply Comments at 4; Bell Atlantic Reply Comments at 2; BellSouth Reply Comments at 2; NYNEX Reply Comments at 2; Pactel Reply Comments at 3; SWBT Reply Comments at 5-6; and US West Reply Comments at 4-5.

[26] DC PSC Comments at 3-4.

[27] Bell Atlantic Reply Comments at 2-3; GSA Reply Comments at 5; MFS Reply Comments at 1-2; MCI Reply Comments at 5; NYNEX Reply Comments at 3-4; Pactel Reply Comments at 2; SWBT Reply Comments at 2-3; and United Reply Comments at 2. *See also* AT&T Comments at 6-7 and AT&T Reply Comments at 4 (stating that the Lifeline

field.[28] No other party supports a contribution charge as the appropriate response to correct the misallocation of GSF investment in Section 69.307.[29]

9. Parties also address the proper means of recovering the costs reallocated to the common line category. Several parties argue that the Commission should consider increasing the cap on SLCs to allow for the recovery of some of the additional costs that will be shifted to the common line category through higher SLCs rather than through an increased carrier common line (CCL) charge,[30] which would increase the potential for bypass of LEC switched access.[31] AT&T states that a small increase in the caps for SLCs would not have an adverse effect on telephone subscribership in the U.S. GSA also agrees it is time for the Commission to revisit the issue of SLC caps. MCI states that it does not take a position as to an increase in the caps for SLCs but believes that the Commission must consider what, if any, changes are needed to accommodate increased allocations to common line, and/or other revenue requirement shifts.[32] MFS argues that the Commission should not address the issue of SLC cap increases within this proceeding.[33] The DC PSC, NTCA, and NRTA are opposed to an increase in the caps for SLCs.[34] NYNEX proposes that the Commission consider a different common line rate for businesses and residential customers.[35] Other parties suggest the creation of a public policy rate element through which certain costs associated with public policy objectives would be assessed on all market participants.[36]

10. A number of parties urge the Commission to implement the proposed rule change as soon as possible to permit LECs to reflect the changes in their annual access tariff filings in April 1993.[37] In light of the increased access competition accompanying implementation of expanded interconnection, Ameritech argues that a delay of the proposed cost allocation changes would risk subjecting LECs to a confiscatory "taking".[38] MCI responds that Ameritech's contention was addressed by the Commission in the *Expanded Interconnection Order* and it does not merit further consideration.[39]

IV. DISCUSSION

11. We amend Section 69.307(b) as proposed in the *Notice*.[40] After reviewing the record, we conclude that modification of Section 69.307(b) to correct the allocation of GSF investment will complement and facilitate the achievement of several Commission goals. The revised rule will allocate costs among service categories in a manner that will result in more cost-based rates for access services. Correcting these misallocations will make access services more efficiently priced, which will stimulate additional usage of the access network by those services whose rates are lowered as a result. As many of the commenters recognize, amending Section 69.307(b) will facilitate the development of a competitive local access market. It will also reduce the possibility that false economic signals will be sent to market entrants. The modified rule permits the rates for special access and switched transport to be brought closer to cost by correcting the misallocation of GSF investment to non-common line categories. This will facilitate the implementation of expanded interconnection for special access, as well as our proposal for expanded interconnection for switched transport.

12. We believe that the costs shifted to the common line category will only negligibly increase the total cost of switched access, and therefore the rates of interstate toll customers. Bell Atlantic estimates the cost of switched access in its region will increase less than one-half of one percent.[41] AT&T's comments indicate that nationwide, total switched access costs would increase by less than 0.2 percent.[42] Approximately three-fourths of the increase in common line costs arises from the shift of costs from the local transport, local switching, and information categories, which are already included in the calculation of the costs

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Assistance and Link-Up America programs are designed to relieve any effect that SLCs may have on the ability of low income households to afford basic telephone service).

[28] DC PSC Comments at 4. DC PSC also recommends that the Commission consider allocating a portion of GSF costs to the LECs' billing and collection services. *Id.* at 5. NYNEX argues that DC PSC's proposal was rejected by the Commission four years ago and that the DC PSC has offered no new reason why the Commission should change its policy now. NYNEX Reply Comments at 4.

[29] GSA Comments at 4-5; Teleport Comments at 2; AT&T Comments at 7; NYNEX Comments at 6; and United Reply at 3. MCI argues that, if the non-cost based GSF allocation is eliminated, the need for a contribution element is also eliminated. MCI Comments at 2. United argues that a contribution charge would be appropriate if the Commission does not treat the cost reallocation as exogenous for price cap LECs. United Comments at 4-5.

[30] SWBT Comments at 8; NYNEX Comments at 4-5; US West Comments at 5, n. 16; GSA Reply at 7; AT&T Reply at 4; GTE Comments at 5; Cincinnati Comments at 4; and AT&T Comments at 6-7.

[31] *See, e.g.*, Bell Atlantic Comments at 3-4; Cincinnati Comments at 4; and NYNEX Comments at 4.

[32] MCI Reply Comments at 4.

[33] MFS Reply Comments at 2, n.2.

[34] DC PSC Comments at 2-4; NTCA Reply Comments at 3, n.7; and NRTA Reply Comments at 1-2.

[35] NYNEX argues that CAPs currently have pricing advantages that cause the LECs to lose customers because the CAPs are not required to serve higher cost customers and areas. NYNEX argues that, with an increase in the SLC caps, LECs could compete effectively if allowed to charge differentiated rates for low volume residential customers and high volume business customers while continuing to serve all residential customers. NYNEX suggests that the Commission grant a waiver under Section 69.204 permitting a thirty-five cent surcharge on the end user common line charge to achieve this balance. NYNEX Comments at 4-5.

[36] *See, e.g.*, Rochester Comments at 4; SWBT Comments at 8-9; and USTA Comments at 7.

[37] Ameritech Comments at 3; Cincinnati Comments at 2; GTE Comments at 3; NECA Comments at 2-3; JSI Comments at 2; Bell Atlantic Reply Comments at 1; GSA Reply Comments at 6; and NTCA Reply Comments at 3.

[38] Ameritech Comments at 3.

[39] MCI Reply Comments at 4. *See Expanded Interconnection Order*, 7 FCC Rcd at 7477-83.

[40] We deny MFS's request that we should hold this proceeding in abeyance until we resolve issues it has raised concerning the appropriateness of LEC special access volume and term discounts. Having found in the *Expanded Interconnection Order* that a cost misallocation existed in our Part 69 rules, we believe it is important to take action expeditiously to reflect our finding.

[41] Bell Atlantic Comments at 3.

[42] *See* AT&T Comments at 7; *accord* USTA Comments at Attachment 1.

of switched access.[43] Only a small share of the costs reallocated from other access categories would be recovered through the CCL charge.

13. The remaining costs shifted to the common line category will be recovered through SLCs,[44] but will have a minimal impact on the multi-line business SLC, and only a negligible effect on the residential SLC. AT&T estimates that the total increase in SLC revenues from the proposed rule change would be only 3.6 percent, a figure undisputed in the record.[45] The SLC costs will be recovered exclusively from the multi-line business SLC, except in three jurisdictions that have residential SLCs below the $3.50 cap.[46] For Bell Atlantic, increases in residential SLC charges will recover less than 1.5 percent of the increase in common line costs.[47] Therefore, the increased allocation of GSF costs to common line reduces the costs to be recovered through special access rates, which are paid largely by businesses, and increases minimally the amount to be recovered through the multi-line business SLC, which is also paid by businesses. We continue to believe that correcting the misallocation will significantly help the developing competition in interstate access markets, and the concomitant benefits justify the minor increases to interstate toll rates and residential SLCs.

14. The DC PSC argues that the falling telephone penetration rate in the District requires the Commission to forego the proposed rule change. Adopting the proposal in the *Notice* would, however, only increase the SLC from $2.43 to $2.85 per line per month,[48] still the lowest rate in the nation by more than $0.60. The DC PSC has not shown that this increase in residential SLC rates is likely to threaten universal service in the District of Columbia. Telephone penetration rates for the District have been extremely volatile, with no apparent relationship to any SLC changes.[49] The decline in telephone penetration rates in the District did not begin until after 1988, long after the initial $2.00 of the residential SLC applicable in the District of Columbia had taken effect.[50] The national trend of increased telephone penetration over the past decade offers strong evidence that the increase in the residential SLC has not caused telephone penetration levels to decline generally, and that it is unlikely to do so in the future.[51] The decline in the District's telephone penetration rate thus appears related to factors other than the SLC.[52] We do not believe that the apparently local conditions of one jurisdiction can justify our failing to correct the misallocation of GSF investment and related costs as proposed in the *Notice* when the benefits flowing from that change are so significant.

15. As we tentatively concluded in the *Notice*, a contribution charge would be an inappropriate, unsatisfactory alternative to resolving the problem of misallocated GSF costs. The institution of a contribution charge poses several serious problems. A contribution charge, if applied only to special access, would cure only part of the over-allocation problem and the Commission would be faced with the same issue again in conjunction with implementing its expanded interconnection proposal for switched transport. In addition, imposing a contribution charge would be complex and burdensome. A continued over-allocation of costs to the special access category would depress demand for such services, whether offered by the LEC or an interconnector. We therefore conclude that amending Section 69.307(b) to correct the misallocation of GSF costs will serve the public interest better than implementing a contribution charge.

16. We conclude that it is appropriate to allow price cap LECs to treat as exogenous the reallocation of costs being ordered herein, and therefore P4 to adjust their price cap indexes to reflect that reallocation.[53] The decision to reallocate the GSF costs will cause significant cost shifts among the various access categories that could not be reflected in LEC rates unless exogenous treatment of the changes is permitted. Moreover, the decision to reallocate the GSF costs lies outside the LECs' control and may therefore properly be treated as exogenous under price cap

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[43] *See* USTA Comments at Attachment 1; AT&T Comments at 7.

[44] Sections 69.501-02 of the Commission's rules, 47 C.F.R. Sections 69.501-02, establish the procedures for splitting the common line costs between the SLC and CCL charges, subject to a cap on the SLC contained in Section 69.204, 47 C.F.R. Section 204. The cap for residential SLCs is the entire interstate common line cost allocation or $3.50 per line, whichever is lower, and for multi-line business customers is the entire interstate common line cost allocation or $6.00 per line, whichever is lower.

[45] AT&T Comments at 7.

[46] The jurisdictions with residential SLCs below $3.50 are: the District of Columbia at $2.43 (Bell Atlantic); Illinois at $3.48 (Ameritech); and Iowa at $3.33 (US West).

[47] *See Ex parte* letter to Donna R. Searcy, Secretary, FCC, from Joseph J. Mulieri, Director, FCC Relations, Bell Atlantic, dated Mar. 30, 1993.

[48] *See Ex parte* letter to Donna R. Searcy, Secretary, FCC, from Joseph J. Mulieri, Director, FCC Relations, Bell Atlantic, dated Mar. 30, 1993.

[49] The data, which are collected three times a year, reflect shifts in penetration rates within a given year that indicate the sensitivity of the results to the sampling process. For example, in 1989 the March penetration rate was 95.1 percent, but the rate dropped to 91 percent in July and rose to 92 percent in November, with an average rate of 92.7 percent. In 1992, 88.7 percent of the households had telephones although 90.5 percent of the households could be contacted by telephone. *See* Report on "Telephone Subscribership in the U.S." issued by the Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, released on December 4, 1992, at 15, and *Id*, released on April 2, 1993, at 13).

[50] The 1984 average penetration rate for the District of Columbia was 94.9 percent, and the 1988 average penetration rate was 94.6 percent. *See* Report on "Telephone Subscribership in the U.S." issued by Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, released on December 4, 1992, at 11, 15.

[51] In mid-1985, the national telephone penetration rate stood at 91.8 percent and increased to 93.9 percent in March 1992. *See* Report on "Telephone Subscribership in the U.S." issued by Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, released on December 4, 1992, at 12, 18.

[52] The FCC has adopted Lifeline and LinkUp plans to assist low income households.

[53] Several parties have sought reconsideration in the transport proceeding of the use of the September 1, 1992, special access rates for developing initial direct-trunked transport rates. We find that, if the September 1992 rates remain the rates to be used to develop the initial direct-trunked transport rates, LECs should adjust those rates to reflect the exogenous cost change adopted in this order.

regulation.[54] These changes should be reflected in the tariffs to become effective on July 1, 1993.[55] The short period from the time that expanded interconnection tariffs for special access interconnection are scheduled to become effective and the date the rules adopted here become effective should not skew the overall competitive market for special access to any significant degree or cause parties to suffer any hardship.

17. Section 61.47(e)(1) of our rules requires that bands for service categories within any price cap basket be adjusted relative to any changes in the price cap index for that basket.[56] Thus, because the exogenous cost treatment will cause the price cap indexes for the various baskets to change, the changes to the bands for the various service categories and subcategories within each basket will be adjusted by a percentage amount equal to the percentage adjustment to the price cap index for that basket resulting from the exogenous change. We find that this adequately addresses Teleport's concern that rates be adjusted equitably in light of the competitive circumstances in the access market, without requiring that each rate element itself be adjusted by a fixed percentage amount. We also find it unnecessary to require price cap LECs to reduce their DS1 and DS3 rates by a smaller percentage amount, as proposed by MFS, to reflect that the rates for these services have been significantly reduced since price cap regulation was implemented. If the GSF adjustment had been made before LEC price cap regulation was adopted, LEC prices for DS1 and DS3 services could have declined to the same level as permitted under this order.

18. Some parties to this proceeding have proposed several broader changes. These include proposals to increase the cap on the SLC charges, to shift some GSF costs to the billing and collection category, to create a public policy rate element for certain costs, to establish a rate differential between business and residential CCL charges, and to conduct a comprehensive review of access charges. Because they are clearly beyond the scope of the *Notice*, which is limited to the misallocation of GSF investment and expenses to non-common line access service categories, we do not consider these proposals in this Order.[57]

V. PROCEDURAL MATTERS

19. In the Notice in this proceeding, we certified that the proposed rule change would apply only to carriers providing interstate access transmission services and that the Regulatory Flexibility Act of 1980 therefore did not apply. Neither the Chief Counsel for Advocacy of the Small Business Administration nor any commenting party challenged our analysis. Carriers providing interstate access services directly subject to the rule amendment adopted herein do not qualify as small businesses since they are dominant in their field of operation. The Secretary shall send a copy of this Report and Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et. seq.*

VI. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, that pursuant to the authority contained in Sections 1, 4(i) and (j), 201-205, 218, 220 & 404 of the Communications Act, 47 U.S.C. Sections 151, 154(i) & (j), 201-205, 218, 220 & 404, and Section 553 of the Administrative Procedure Act, 5 U.S.C. Section 553, Section 69.307(b) of the Commission's Rules is AMENDED as set forth in Appendix A hereto.

21. IT IS FURTHER ORDERED, that the rule as amended SHALL BE EFFECTIVE on July 1, 1993.

22. IT IS FURTHER ORDERED, that the petition for deferral filed by MFS IS DENIED to the extent it sought deferral of Commission action in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

Part 69 of Title 47, Code of Federal Regulations, is amended as follows:

Part 69 -- ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

AUTHORITY: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.4 is amended by revising paragraph (b)(8) and adding paragraph (b)(9) to read as follows.

§ 69.4 Charges to be filed.

* * * * *

(b) * * *

(8) Line information database;

(9) Entrance facilities.

3. Section 69.305 is amended by revising paragraph (b) to read as follows:

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[54] We reach this conclusion under Section 61.45(d) of our rules, pursuant to which the Commission may permit or require exogenous cost treatment. LEC tariff filings implementing this cost reallocation shall contain a detailed showing justifying the reasonableness of the reallocation amount. Such a showing should reflect the 1992 ARMIS data.

[55] The tariffs implementing the rule modification adopted herein shall be filed on 14 days notice.

[56] 47 C.F.R. Section 61.47(e)(1).

[57] We also correct in Appendix A the inadvertent alterations of Sections 69.4, 69.305, 69.306, and 69.307(a) in *Transport Rate Structure and Pricing*, CC Docket No. 91-213, 7 FCC Rcd 7006 (1992).

§ 69.305 Carrier cable and wire facilities (C&WF).

* * * * *

(b) Carrier C&WF, other than WATS access lines, not assigned pursuant to paragraphs (a) or (c) of this section that is used for interexchange services that use switching facilities for origination and termination that are also used for local exchange telephone service shall be apportioned to the Transport elements.

4. Section 69.306 is amended by revising paragraph (c) to read as follows:

§ 69.306 Central office equipment (COE)

* * * * *

(c) COE Category 2 (Tandem Switching Equipment) that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States v. Western Electric Co.* shall be assigned to the tandem switching charge subelement and the interconnection charge element. COE Category 2 which is used to provide transmission facilities between the local exchange carrier's signalling transfer point and the database shall be assigned to the Line Information Database subelement at § 69.120(a). All other COE Category 2 shall be assigned to the interexchange category.

* * * * *

5. Section 69.307 is revised to read as follows:

§ 69.307 General support facilities.

(a) General purpose computer investment used in the provision of the Line Information Database sub-element at Section 69.120(b) shall be assigned to that sub-element.

(b) All other General Support Facilities investments shall be apportioned among the interexchange category, the billing and collection category, and Common Line, Limited Pay Telephone, Local Switching, Information, Transport, and Special Access elements on the basis of Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities, combined.

APPENDIX B

COMMENTS FILED IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING December 4, 1992

1. Ameritech Operating Companies (Ameritech)
2. American Telephone and Telegraph Company (AT&T)
3. Bell Atlantic Telephone Companies (Bell Atlantic)
4. BellSouth Telecommunications, Inc. (BellSouth)
5. Cincinnati Bell Telephone (Cincinnati)
6. Public Service Commission of the District of Columbia (DC PSC)
7. General Services Administration (GSA)
8. GTE Service Corporation (GTE)
9. GVNW Inc./Management (GVNW)
10. MCI Telecommunications Corporation (MCI)
11. MFS Communications Company, Inc. (MFS)
12. National Exchange Carrier Association (NECA)
13. NYNEX Telephone Companies (NYNEX)
14. Pacific Bell and Nevada Bell (Pactel)
15. Rochester Telephone Corporation (Rochester)
16. Southern New England Telephone Company (SNET)
17. Sprint Communications Co. (Sprint)
18. John Staurulakis, Inc. (JSI)
19. Southwestern Bell Telephone Company (SWBT)
20. Teleport Communications Group (Teleport)
21. United Telephone Companies (United)
22. United States Telephone Association (USTA)
23. US West Communications, Inc. (US West)

REPLY COMMENTS FILED IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING December 21, 1992

1. Ameritech
2. AT&T
3. Bell Atlantic
4. BellSouth
5. GSA
6. MCI
7. MFS
8. National Rural Telecom Association (NRTA)
9. National Telephone Cooperative Association (NTCA)
10. NYNEX
11. Pactel
12. SWBT
13. United
14. USTA
15. US West
16. WilTel, Inc. (WilTel)

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: May 21, 1993

UTILITIES TELECOMMUNICATIONS COUNCIL FILES PETITION FOR CLARIFICATION REGARDING DARK FIBER SERVICE

PLEADING CYCLE ESTABLISHED

COMMENTS: June 22, 1993
REPLY COMMENTS: July 8, 1993

The Utilities Telecommunications Council (UTC), on April 28, 1993, filed a petition for clarification of the Commission's Memorandum Opinion and Order in the dark fiber proceeding (*Dark Fiber Order*), 8 FCC Rcd 2583 (1993). In that order, the Commission determined that the provision of dark fiber service by Southwestern Bell Telephone Company, US West Communications, Bell Atlantic Telephone Companies and BellSouth Telephone Companies is a communications service pursuant to Title II of the Communications Act of 1934, as amended, and thus within the Commission's jurisdiction. UTC seeks clarification that the Commission's finding relating to dark fiber service is only applicable to the leasing of dark fiber by common carriers.

UTC maintains that the *Dark Fiber Order* refers only to dark fiber service offered by the Bell Operating Companies, and is concerned that the Commission's order could be misinterpreted as implying that the dark fiber leasing arrangements of non-common carriers are subject to Title II. UTC seeks clarification that the leasing of dark fiber on a private contract basis by non-common carriers is not subject to Title II regulation. It argues that the Commission should not discourage the leasing of dark fiber by non-common carriers, such as utilities, by asserting its jurisdiction over this activity because dark fiber leasing results in better, more sophisticated communications networks.

Interested parties may file comments regarding the UTC petition for clarification no later than **June 22, 1993.** Replies should be filed by **July 8, 1993.**

An original and four copies of all comments and reply comments must be filed in accordance with Section 1.51(c) of the Commission's Rules, 47 C.F.R. § 1.51(c). In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, and one copy with the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

For further information, contact Norma Bell, Tariff Division, Common Carrier Bureau, (202) 632-6917.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-32

In the Matter of

Amendment of Section 73.202(b), RM-8174
Table of Allotments,
FM Broadcast Stations.
(Tracy, Minnesota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 10, 1993; Released: May 28, 1993

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 1550 (1993), issued in response to a petition filed by Plum Creek Broadcasting Company, Inc. ("petitioner"), proposing the substitution of Channel 286C3 for Channel 286A at Tracy, Minnesota. Petitioner also requested modification of its construction permit (File No. BPH-890419JS) for Station KARL, Channel 286A, to specify operation on Channel 286C3. Petitioner filed comments in which it reaffirmed its interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 286C3 for Channel 286A at Tracy since it would provide expanded reception service to the community. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at petitioner's specified site.[1] In addition, we have authorized a modification of the construction permit for Station KARL, Channel 286A, Tracy, Minnesota, to specify operation on Channel 286C3, in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 12, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Tracy, Minnesota	286C3

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station KARL, Tracy, Minnesota, IS MODIFIED to specify operation on Channel 286C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Plum Creek Broadcasting Company, permittee of Station KARL, is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 286C3 at Tracy are 44-13-46 and 95-44-36.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-88

In re Applications of

Mary Anne Embrey d/b/a CLARKSVILLE RADIO	File No. BPH-890830MF
LISA M. JENKINS	File No. BPH-890905MA
Q PRIME, INC.	File No. BPH-890905ME
KENTUCKIANA RADIO PARTNERS	File No. BPH-890905MO
CLARKSVILLE BROADCASTING LTD. PARTNERSHIP	File No. BPH-890905MU

For Construction Permit
for a New FM Station on
Channel 226A in Clarksville, Indiana

ORDER

Adopted: May 19, 1993; Released: May 28, 1993

By the Review Board: MARINO (Chairman), BLUMENTHAL, and GREENE.

1. The *Initial Decision* of Administrative Law Judge Joseph P. Gonzalez, 8 FCC Rcd 875 (1993), in the above-captioned proceeding was released on February 10, 1993. Q Prime, Inc. has failed to file exceptions to this decision. Thus, its application will be dismissed for failure to prosecute pursuant to 47 CFR § 1.276(f).

2. ACCORDINGLY, IT IS ORDERED That the application of Q Prime, Inc. (File No. BPH-890905ME) IS DISMISSED with prejudice.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-145

In the Matter of

Amendment of Section 73.202(b), RM-8235
Table of Allotments,
FM Broadcast Stations.
(Limon, Colorado)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 13, 1993; Released: May 28, 1993

Comment Date: July 19, 1993
Reply Comment Date: August 3, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Anastasis Broadcasting Co. ("petitioner") requesting the allotment of Channel 276C2 to Limon, Colorado, as that community's first local FM service. Petitioner expressed its intention to apply for the channel, if allotted.[1]

2. We believe the public interest would be served by proposing the allotment of Channel 276C2 to Limon, Colorado, since it could provide the community with its first local FM service. Channel 276C2 can be allotted to Limon consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.[2]

3. Accordingly, we believe it is appropriate to seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the community listed below, as follows:

	Channel No.	
City	Present	Proposed
Limon, Colorado	--	276C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **July 19, 1993,** and reply comments on or before **August 3, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Anastasis Broadcasting Co.
Attn: Mike Rey, President
4001 Jefferson Dr.
Loveland, CO 80537

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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[1] Although petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in its comments.

[2] Coordinates used for Channel 276C2 are 39-15-50 and 103-41-30.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-146

In the Matter of

Amendment of Section 73.202(b), RM-8231
Table of Allotments,
FM Broadcast Stations.
(Potts Camp, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 14, 1993; Released: May 28, 1993

Comment Date: July 19, 1993
Reply Comment Date: August 3, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Potts Camp Broadcasting ("petitioner"), seeking the allotment of Channel 240A to Potts Camp, Mississippi, as that community's first local service. Petitioner provided an engineering study in support of the petition and indicated it would apply for the channel, if allotted.

2. We believe the proposal warrants consideration because the proposed allotment would provide a first local service to Potts Camp, Mississippi. Channel 240A can be allotted to Potts Camp consistent with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 6.1 kilometers (3.8 miles) south of the community.[1] The site restriction will prevent short spacings to Channel 239A, Station WYYA, Olive Branch, Mississippi, and to Channel 240A, Station WFKX, Henderson, Tennessee.

3. In view of the fact that the proposed allotment would provide a first local service to Potts Camp, the Commission believes it would serve the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Potts Camp, Mississippi	---	240A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **July 19, 1993,** and reply comments on or before **August 3, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Riley M. Murphy
1100 Poydras Street, Suite 2590
New Orleans, Louisiana 70163-2590

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 240A at Potts Camp are 34-35-39 and 89-19-33.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-280

In the Matter of

Amendment of Section 73.202(b), RM-8120
Table of Allotments,
FM Broadcast Stations.
(McAlester, Oklahoma)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 14, 1993; Released: May 28, 1993

By the Chief, Allocations Branch:

1. At the request of Trayne Communications, Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 7 FCC Rcd 7845 (1992), proposing the substitution of Channel 286A for Channel 285A at McAlester, Oklahoma, and the modification of Station KTMC-FM's license to specify operation on the alternate Class A channel. Petitioner submitted late-filed comments reiterating its intention to apply for the channel, if allotted.[1] No other comments were received.

2. We believe the public interest would be served by substituting Channel 286A for Channel 285A at McAlester since it could enable Station KTMC-FM to operate as a 6 kW Class A facility. Channel 286A can be allotted to McAlester in compliance with the Commission's minimum distance separation requirements at Station KTMC-FM's presently licensed site.[2] As requested, we will also modify Station KTMC-FM's license to specify operation on Channel 286A.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 12, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
McAlester, Oklahoma	267C1, 286A

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Trayne Communications, Inc., for Station KTMC-FM, McAlester, Oklahoma, IS MODIFIED to specify operation on Channel 286A in lieu of Channel 285A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KTMC-FM's license, File No. BLH-860609KB, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license File No. BLH-860609KB, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] In conformance with the Commission's general policy of accepting late-filed comments where the proceeding is uncontested, we will accept petitioner's comments for the purpose of permitting a continuing expression of interest in Channel 286A at McAlester. *See Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1988).

[2] The coordinates for Channel 286A at McAlester are North Latitude 34-58-08 and West Longitude 95-46-21.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-312

In the Matter of

Amendment of Section 73.202(b), RM-8137
Table of Allotments,
FM Broadcast Stations.
(Walhalla, North Dakota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 18, 1993; Released: May 28, 1993

By the Chief, Allocations Branch:

1. At the request of Roger A. and Kathryn Ann Anderson ("petitioners"), the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 363 (1993), proposing the allotment of Channel 294C2 to Walhalla, North Dakota, as the community's first local FM service. Petitioners filed comments reiterating their intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 294C2 to Walhalla since it an interest has been expressed in providing the community with its first local FM service. Channel 294C2 can be allotted to Walhalla in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (16.3 miles) west to avoid short-spacings to unoccupied and unapplied-for Channels 292C and 296C, Winnipeg, Manitoba, and Channel 294C, Kenora, Ontario, Canada.[1] Canadian concurrence in the allotment has been received since Walhalla is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 12, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Walhalla, North Dakota	294C2

4. The window period for filing applications will open on **July 13, 1993,** and close on **August 12, 1993.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 294C2 at Walhalla are North Latitude 48-55-23 and West Longitude 98-03-11.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: May 25, 1993

EMERGENCY REQUEST TO REINSTATE ENFORCEMENT OF THE HEARING AID COMPATIBILITY RULES

CC Docket No. 87-124

COMMENT DATE: June 10, 1993
REPLY DATE: June 30, 1993

On May 11, 1993 Alexander Graham Bell Association for the Deaf, the National Association of the Deaf, the National Center for Law and Deafness, Self Help for Hard of Hearing People, Inc., Telecommunications for the Deaf, Inc., and the World Institute on Disability (Alexander Graham Bell, *et al)* jointly filed a request that the Commission declare null and void its *Order* in CC Docket No. 87-124, released April 15, 1993, FCC No. 93-191, suspending until further notice enforcement of portions of Section 68.112 of the Commission's Rules. 58 Fed. Reg. 26692 (May 5, 1993).

Copies of the request, and comments when filed, may be inspected and copied at the Common Carrier Bureau, Domestic Facilities Division Reference Room, Room 6220, 2025 M Street N.W., Washington, D.C., Monday through Thursday from 8:30 a.m. to 3:00 p.m. Copies are also available from ITS, Inc., Room 246, 1919 M St., N.W., Washington, D.C. (202) 632-7513. Comments regarding the Alexander Graham Bell, *et al* request may be filed on or before **June 10, 1993.** Reply comments are due by **June 30, 1993.** For general information on how to file comments, parties should contract the FCC Consumer Assistance and Information Division at (202) 632-7000.

For further information, contact Robert Kimball at (202) 634-7150.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 91-295

In the Matter of

Amendment of Part 90 to Increase
the Number of Frequencies in the
72-76 MHz Band for Low-Power
Mobile Use

ERRATUM

Released: May 17, 1993

By the Chief, Private Radio Bureau:

1. On December 14, 1992, the Commission released a *Report and Order* in this proceeding, FCC 92-534, that provided additional 72-76 MHz frequencies for low-power mobile use in certain private land mobile radio services. This *Erratum* corrects the class of station designation for these frequencies as shown in the frequency tables for the Power, Petroleum, and Business Radio Services.

2. The entry for the frequency 74.61 MHz in the Power Radio Service Frequency Table appearing in Section 90.63(c) is revised by changing the Class of station(s) from "do" to "Mobile".

3. The entry for the frequency 74.61 MHz in the Petroleum Radio Service Frequency Table appearing in Section 90.65(b) is revised by changing the Class of station(s) from "do" to "Mobile".

4. The entry for the frequency 74.61 MHz in the Business Radio Service Frequency Table appearing in Section 90.75(b) is revised by changing the Class of station(s) from "do" to "Mobile".

5. Because these changes correct errors in the adopted rules, IT IS ORDERED that for good cause shown pursuant to the provisions of 5 U.S.C. § 553(d)(3), these rule changes are effective immediately upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CHARTER NETWORK COMPANY,
AFFORD-A-CALL CORPORATION,
Complainants,

v.

GTE NORTH INCORPORATED,	File No. E-93-01
Defendant.	File No. E-93-02

and

In the Matter of

LITEL TELECOMMUNICATIONS CORPORATION,
Complainant,

v.

GTE CALIFORNIA INCORPORATED,	File No. E-93-03
GTE FLORIDA INCORPORATED, and	File No. E-93-04
GTE NORTH INCORPORATED,	File No. E-93-05
Defendants.	

ORDER

Adopted: May 20, 1993; Released: May 28, 1993

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On October 1, 1992, the above-captioned complainants (Complainants) filed formal complaints against GTE North Incorporated, GTE California Incorporated and GTE Florida Incorporated (GTE) seeking damages resulting from GTE's alleged violations of the Commission's rate of return prescription for the period January 1, 1989 through December 31, 1990. On May 13, 1993, however, Complainants and GTE filed joint motions to dismiss the complaints with prejudice stating that the parties have entered into settlement agreements which resolve all issues and controversies asserted by Complainants in the above-captioned complaints.

2. We are satisfied that dismissal of the complaints will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated by Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that Complainants' and GTE's Joint Motions to Dismiss ARE GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint proceedings ARE DISMISSED WITH PREJUDICE and ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
and Investigations Branch
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-313

In the Matter of

Policy and Rules Concerning
Rates for Dominant Carriers

ORDER AND NOTICE OF PROPOSED RULEMAKING

Adopted: April 23, 1993; Released: May 21, 1993

COMMENTS DUE: July 6, 1993
REPLY COMMENTS DUE: July 21, 1993

By the Commission:

I. INTRODUCTION

1. On September 8, 1992, the United States Court of Appeals for the District of Columbia Circuit remanded this proceeding to the Commission for further consideration of the Commission's policy governing price cap treatment of AT&T's promotional offerings.[1] To resolve the issues before us on remand, we now vacate our prior decision on this issue and propose, on a prospective basis, to exclude promotional rates from price caps.

II. BACKGROUND

2. In the *AT&T Price Cap Order*[2] the Commission replaced its traditional rate of return regulation of AT&T with an incentive-based system of regulation for most of that carrier's telecommunications services. The *AT&T Price Cap Order* established a system of streamlined review for tariff revisions if AT&T shows that the proposed rates fall within price cap limits as measured by certain indexes established under the price cap rules. Under a carefully balanced system that divides AT&T's services into baskets, and subdivides baskets into service categories, AT&T's ability to offset unfairly price increases and decreases to the detriment of some ratepayers is constrained.[3] The *AT&T Price Cap Order* grouped services in baskets in a manner that discourages cross-subsidization and discriminatory pricing. The Order contemplates that within each basket, AT&T would have flexibility to raise prices for one service and lower them for another. The Order focused on the general, and generally-available schedule of long distance rates. For example, it established service categories within the residential and small business basket for domestic day, evening, and night/weekend rates. It did not address promotional rate offerings, which typically are temporary discounts targeted to particular services and sets of customers.[4]

3. In the absence of explicit Commission direction, AT&T began to file, and the Common Carrier Bureau did not investigate or reject, an increasing number of transmittals proposing promotional rate changes that claimed price cap index credit.[5] MCI and Sprint requested clarification of the treatment promotional pricing activities should receive in a price caps regime.[6]

4. In the *AT&T Price Cap Reconsideration Order*, in what it viewed as a clarification, the Commission determined that promotions should be excluded from price caps and price cap index calculations. The Commission further found that promotional offerings would not be limited, so long as the offering was not otherwise unlawful.[7] In addition, the Commission directed AT&T to recalculate its price cap indexes to remove the effects of existing promotions from the price cap indexes, but not past promotions no longer in effect. AT&T filed a petition for review of the *AT&T Price Cap Reconsideration Order* to the U.S. Court of Appeals for the District of Columbia on the grounds that the Order represented a change in policy rather than a clarification, which, according to AT&T, required notice and comment prior to adoption pursuant to the Administrative Procedure Act. AT&T also challenged the Commission's requirement that AT&T recalculate its price cap indexes to remove promotions because, according to AT&T, it violated the Administrative Procedure Act's prohibition on retroactive rulemaking.

5. On September 8, 1992, the Court of Appeals concluded that the *AT&T Price Cap Reconsideration Order* "is arbitrary and capricious for want of an adequate explanation."[8] The Court remanded the proceeding to the Commission for further consideration. The Court said that the Commission should provide an adequate explanation if it decides to sustain the policy of excluding promotional rates from price cap indexes. In addition, the Court stated that if the Commission considers its action to be a

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[1] American Telephone and Telegraph Co. v. FCC, 974 F.2d 1351 (D.C. Cir. 1992).

[2] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket 87-313, Report and Order and Second Further Notice, 4 FCC Rcd 2873 (1989) and Erratum, 4 FCC Rcd 3379 (1989) (*AT&T Price Cap Order*), *modified on recon.* 6 FCC Rcd 665 (1991) (*AT&T Price Cap Reconsideration Order*).

[3] *AT&T Price Cap Order*, 4 FCC Rcd at 3051-67.

[4] An example of such an offering can be found in AT&T's Transmittal No. 4417, which applied the off-peak rate all day for direct-dialed calls to Mexico on the Mexican holiday of Fiestas Patrias, September 16, 1992. The discount was limited to customers using selected area codes in southern and central California and the Chicago area.

[5] The *AT&T Price Cap Reconsideration Order* noted a rapid increase in the number of promotions filed, finding that in the six months preceding the Order, AT&T filed promotions that represented as much as $40 million in promotional activity. *AT&T Price Cap Reconsideration Order*, 6 FCC Rcd at 670, n.66.

[6] *AT&T Price Cap Reconsideration Order*, 6 FCC Rcd at 670.

[7] Specifically, the Commission concluded: "AT&T may also offer any promotions that are consistent with the requirements of the Act. AT&T may not, however, offer a promotional rate decrease targeted to a subgroup of ratepayers, with a rate increase that all persons taking service under the tariff must pay." *AT&T Price Cap Reconsideration Order*, 6 FCC Rcd at 672 (para. 56).

[8] American Telephone and Telegraph Co. v. FCC, 974 F.2d at 1355.

clarification, the Commission must address the considerable contrary evidence presented by AT&T. If the Commission decides that its action constitutes a change in the original price cap rules, however, the Commission must offer a reasoned explanation of why it should treat promotional rates differently from other rates.[9]

III. DISCUSSION

6. The Court of Appeals remanded this proceeding to the Commission for an explanation of the treatment promotional offerings should receive in a price caps regime. Because the Court objected to our characterization of our promotions policy as a "clarification," as well as to our explanation for the policy, we will respond by vacating that portion of the *AT&T Price Cap Reconsideration Order*, and initiating this Notice of Proposed Rulemaking to decide the issue.[10] We tentatively conclude that, excluding promotional rates from price cap regulation on a prospective basis would serve the goals of the price cap plan and the Communications Act, because of the difference between promotional and general schedule rates, as well as other considerations.[11]

7. A basic purpose of price caps is to assure a reasonable general schedule of long distance rates for ratepayers. In the *AT&T Price Cap Reconsideration Order*, the Commission explained that although price cap regulation is designed to reward efficiency by granting carriers flexibility in pricing individual services, the Commission rejected a price cap system that would grant AT&T unlimited flexibility in pricing.[12] In its residential/small business basket, AT&T has taken advantage of any downward flexibility generated by price decreases to raise other rates in the basket, keeping aggregate rates at the price cap maximum. If AT&T is allowed to take index credit for promotions, its actual price index (API) would decrease. As has historically been the case in Basket 1, AT&T could then increase its API by increasing general schedule rates.[13] Permitting promotional offerings to be used as a basis for raising basic schedule rates, without limitation, would strongly encourage the proliferation of excessive promotional offerings and undercut the efficiency incentives of the price cap program. For example, AT&T could attempt to promote its services to customers of other interexchange carriers (IXCs) with the promise of interim rate cuts or long distance gift certificates, and then protect its revenue stream by increasing rates in the basic MTS schedule for existing customers. In other words, AT&T could offer promotions when it needed to raise general schedule rates to cover its inefficiencies even though price cap regulation is designed to provide an incentive for companies to operate more efficiently.

8. Moreover, since one of the fundamental purposes of price cap regulation is to put AT&T on a more equal competitive footing with other IXCs, allowing AT&T to insulate itself from revenue losses caused by promotional pricing undercuts one of the basic goals of price cap regulation.[14] Permitting AT&T to use the impact of promotions to effect index changes could also perversely skew the business incentives inherent in making decisions to offer promotions. AT&T's decision to offer promotions should be made on the same basis as any other business makes such a decision: whether the cost of the promotion will generate more revenues long-term, by building customers and minutes. We seek comment on these tentative conclusions.

9. We also tentatively conclude that including promotional offerings in price cap indexes would undercut the Commission's enforcement mechanism for price cap regulation. The Commission designed this incentive based regulation with certain safeguards to prevent rate increases above the price cap index. Thus, the *AT&T Price Cap Order* required a full cost-based showing for tariff filings proposing above-cap rates and suggested that these rates would take effect only after suspension and a compelling justification.[15] Since it is the threat of suspension that operates to encourage carriers to stay below the cap on a price cap system, it follows that there must be something to suspend for the enforcement mechanism to work. Although promotional offerings are implemented by tariff filings, these tariffs expire of their own accord. The possibility exists that the expiration of a promotional tariff might raise AT&T's API above its price cap index. The Commission could not prevent this occurrence with the threat of a tariff suspension because it has no tariff before it to suspend. Therefore, allowing index credit for promotional offerings would undercut the Commission's ability to enforce its price cap regime.

10. In addition, the price cap plan was structured to prevent cross-subsidization while affording flexibility to AT&T's business operations. If included in the price cap index, promotions would allow AT&T to lower rates for selected customers and routes, and offset this by setting higher rates for customers generally. Just as the baskets were established to remove the benefits of cross-subsidization from services used by different groups of customers, denying price cap index credit for promotions eliminates the benefits of cross-subsidization from one set of customers to another, or for one route to another. Moreover, by mitigating this concern, the Commission can permit AT&T substantial flexibility in how it structures its promotional efforts, because AT&T would have substantially lower incentives and ability to target its promotions in ways that are unreasonably discriminatory or preferential.

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[9] *Id.*

[10] Appendix A contains a rules appendix vacating the Part 61 rule that excluded promotions from price cap index calculations. Appendix B contains proposed rules that would reinsert the rule section we are vacating in this order.

[11] The Commission has previously recognized that promotional offerings are a legitimate method for generating additional minutes of use on the network, which increases efficiency and benefits all ratepayers. *AT&T Price Cap Reconsideration Order*, 6 FCC Rcd at 670. The issue addressed in this NPRM is not whether to permit promotions, but how to treat them for price cap purposes.

[12] *AT&T Price Cap Reconsideration Order*, 6 FCC Rcd at 665-69 (establishing baskets and bands to limit pricing flexibility). With respect to promotions, excluding promotional offerings from price cap regulation means that AT&T could not take index credit for these price reductions, and would have less upward pricing flexibility for other capped offerings.

[13] *Id.* at 671-72.

[14] If AT&T operated in a completely competitive market, this issue would be moot because AT&T could not raise general schedule rates without the fear of losing customers to a competitor.

[15] *AT&T Price Cap Order*, 4 FCC Rcd at 3109-11.

11. Based on these considerations, we tentatively conclude that promotional rate changes should be excluded from price caps. Alternatively, we seek comment on whether promotions should be treated under price cap rules as new or restructured services. Promotions are marketing vehicles for new services or to attract new customers to services already tariffed. Under this proposal, if AT&T promotes a new service, the promotion would also be considered new, and would be temporarily excluded from the indexes as new services are under the existing price cap rules. We would expect many of these promotions to expire before they would be included permanently in the indexes. If AT&T promotes an existing service, under our rules the promotional tariff becomes a new version of the existing service and is also treated as new.[16] Under Section 61.49(g) of the Commission's Rules, treating promotions as new services would also require AT&T to submit cost support materials with its promotional filings with a net revenue showing. We seek comment on this alternative approach.

12. We tentatively find that if adopted this rule should apply to promotions in effect when the rule becomes effective and that AT&T would be required to adjust its price cap indices at that time to reflect the new rules. Thus, AT&T would not be able to offset general rate increases with promotional offerings in effect at that time. This would not impede AT&T's ability to offer promotions, nor would it affect the lawfulness of any existing tariff. Since the rule would only apply prospectively to offerings in effect at its adoption, we do not believe application of this rule to these offerings would constitute retroactive rulemaking.[17] We seek comment on these findings and tentative conclusions.

IV. COMMENTS; PROCEDURAL RULES

13. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

14. Pursuant to applicable procedures set forth in Section 1.415 and 1.419 of the Commissions Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments in this proceeding on or before **July 6, 1993** and reply comments on or before **July 21, 1993.** All relevant and timely comments will be considered by this Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

15. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments an original and 11 copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) at its headquarters at 1919 M St., N.W., Washington, D.C.

16. We have determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b) does not apply to this rulemaking proceeding because if promulgated, it would not have a significant economic impact on a substantial number of small entities. Although we do not find that the Regulatory Flexibility Act is applicable to this proceeding, this Commission has an ongoing concern with the effect of its rules and regulation on small business and the customers of the regulated carriers. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq* (1981).

V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 4(j), 201-205, 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 201-205, 303(r), 403, NOTICE IS HEREBY GIVEN of proposed amendments to Part 61, and Section 61.42, in accordance with the proposals, discussions, and statement of issues in this Notice of Proposed Rulemaking, and that COMMENT IS SOUGHT regarding such proposals, discussion, and statement of issues.

18. IT IS FURTHER ORDERED, that a rulemaking proceeding IS INSTITUTED to determine whether proposals made herein concerning the regulation of promotional offerings by AT&T would be in the public interest.

19. IT IS FURTHER ORDERED, that the portion of the *AT&T Price Cap Reconsideration Order* amending Section 61.42 of the Commission's rules by adding Section 61.42(c)(10), 47 C.F.R. § 61.42(c)(10), IS VACATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[16] In the *AT&T Price Cap Order*, the Commission explained that a new service "may be a partial substitute for an existing offering, as long as the existing offering remains available, and the range of alternatives available to consumers is increased by the introduction of the new service." 4 FCC Rcd at 3123.

[17] *See Bowen v. Georgetown University Hospital*, 109 S. Ct. 468, 477-78 (1988)(Scalia, J. concurring); *Chemical Waste Management, Inc. v. EPA*, 869 F. 2d 1526, 1536 (D.C. Cir. 1989).

APPENDIX A - AMENDED RULES

PART 61
Amendment to the Code of Federal Regulations

PART 61 - TARIFFS

1. The authority citation for Part 61 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply Sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.42(c)(10) is removed and reserved.

APPENDIX B - PROPOSED RULE

PART 61
Amendment to the Code of Federal Regulations

PART 61 - TARIFFS

1. The authority citation for Part 61 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply Sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.42 is amended by deleting the reserve designation for (c)(10) and adding language to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(c) * * *

(10) Promotional offerings for services in § 61.42(b)(1), (b)(2) and (b)(3).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)
	)
Metric Conversion of Parts 1, 2, 15, 18, 21, 22, 23, 25, 36, 61, 63, 68, 69, 73, 74, 76, 78, 80, 87, 90 and 94 of the Commission's rules	)
	)

ORDER

Adopted: April 8, 1993 ; Released: May 7, 1993

By the Commission:

1. By this action, the Commission essentially completes the conversion of its rules to the International System of Units (metric system) of measurement. This action is consistent with the Metric Conversion Act of 1975[1], as amended by the Omnibus Trade and Competitiveness Act of 1988[2]. That act designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and requires, to the extent economically feasible, certain Federal agencies to use the metric system in their procurements, grants, and other business-related activities by September 30, 1992, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

DISCUSSION

2. The Commission has been converting its rules to the metric system of measurements as the rules have been routinely updated.[3] However, not all existing rules have been converted. By this action, we are completing the conversion except as noted below. We are converting these rules in what we believe is a non-controversial manner. In particular, we have sought to ensure that communications facilities previously in compliance with our rules do not become non-compliant as a result of metric conversion. To the extent possible, we have adopted metric units that are marginally less restrictive

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1 See Public Law 94-168.

2 See Public Law 100-418.

3 See Public Notice 41845, August 3, 1976.

than those currently specified.[4] To help make our metric standards convenient we have also used rounded units whenever possible. Each rule part was converted by the Commission bureau or office that is responsible for it, using the degree of precision the bureau or office believed was necessary, based upon its experience, to avoid significant controversy.

3. English units have been included in parentheses with many of our metric standards. The English units are for information purposes only, and in cases where the two figures are not precisely equivalent, the metric unit shall be considered as the sole requirement.[5]

4. Currently licensed facilities and already authorized equipment will continue to be subject to the rules that were in effect prior to this action. Hence, license renewals will not be affected. However, licensees or grantees seeking to modify any technical parameter of their authorization must comply with the metric standard for that parameter.

5. In a few limited circumstances, we have not converted our rules to metric units. Exceptions include (1) rules that use non-metric units based on international convention; and, (2) rules that, if converted to metric units, would cause substantial confusion to long-standing industry practices and that, if not converted, would have no impact on international trade activities, e.g., tariff publications. Figures R3, 9, 10, and 11 in Section 73.190, the propagation curve in Section 80.767, and the shadow loss chart in Section 80.769 are not being converted in this order. They will be handled separately at a later date because the responsible bureaus are still developing the metric conversions for them.

6. This order does not change any of the Commission's forms, instruction manuals, bulletins, or information filing requirements, including those that require approval from the Office of Management and Budget (OMB). These items will be converted to metric units at the appropriate time consistent with Commission priorities and in accordance with our, and OMB's, normal review processes. This conversion process is expected to take approximately five years, and applicants shall continue to report English units until such applicable filing forms are converted.

PROCEDURAL MATTERS

7. Because the simple conversions implemented by this order do not significantly change the Commission's rules, this change constitutes a minor

---

[4] These relaxations are so small that they should have no significant effect on the rights or responsibilities of Commission licensees.

[5] There are two exceptions to this policy. The first is that we will permit, but not require the use of standard metric paper sizes. The second is that until all Commission forms are converted to metric units, compliance with the English unit in the rules shall be considered sufficient when a Commission form requests compliance data in English units.

and non-controversial amendment to our rules in which the public is not likely to be interested. Therefore, we find for good cause that compliance with the notice and comment procedure of the Administrative Procedure Act is unnecessary. See 5 U.S.C. Section 553(b)(B).

ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that under the authority contained in Sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, Parts 1, 2, 18, 21, 22, 23, 25, 36, 61, 63, 68, 69, 73, 74, 76, 78, 80, 87, 90 and 94 of the Commission's Rules and Regulations ARE AMENDED as set forth in the appendix below. These rules and regulations are effective [30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

PART 1--PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. A new Section 1.19 is added to read as follows:

Section 1.19 Use of metric units required.

Where parenthesized English units accompany metric units throughout this chapter, and the two figures are not precisely equivalent, the metric unit shall be considered the sole requirement; except, however, that the use of metric paper sizes is not currently required, and compliance with the English unit shall be considered sufficient when the Commission form requests that data showing compliance with that particular standard be submitted in English units.

3. The first through sixth sentences of paragraph (a) in Section 1.49 are amended to read as follows. The rest of the paragraph remains unchanged.

Section 1.49 Specifications as to pleadings and documents.

(a) All pleadings and documents filed in any proceeding shall be on A4 (21 cm x 29.7 cm) or 8.5 in x 11 in (21.6 cm x 27.9 cm) paper. The impression shall be double spaced, except that long quotations shall be single spaced and indented. All papers shall be typewritten or prepared by mechanical processing methods. The left hand margin shall be not less than 4 cm (1.5 in) wide. Both sides of the paper may be used. (If both sides are used, it is the right hand margin of even-numbered pages which shall be at least 4 cm (1.5 in) wide; and the pleading shall be bound -- e.g., stapled twice -- in the left hand margin, so as to open like a book). * * *

* * * * *

PART 2--FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, and 307.

2. The first sentence of paragraph (b)(2) in Section 2.948 is amended to read as follows. The rest of paragraph (b)(2), and the rest of Section 2.948 remain unchanged.

Section 2.948 Description of measurement facilities.

* * * * *

(b) * * *

(2) Physical description of the test site accompanied by photographs of size A4 (21 cm x 29.7 cm) or 8 x 10 inches (20.3 cm x 25.4 cm). * * *

* * * * *

3. The first three sentences of paragraph (a)(5) of Section 2.975 are amended to read as follows. The rest of paragraph (a)(5), and the rest of Section 2.975, remain unchanged.

Section 2.975 Application for notification.

(a) * * *

(5) For devices operated under the provisions of Part 15 of this chapter, photographs showing the general appearance and the controls available to the user. Photographs should be of size A4 (21 cm x 29.7 cm) or 8 x 10 inch (20.3 cm x 25.4 cm). Smaller photographs may be submitted provided they are sharp and clear, show the necessary detail, and are mounted on A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) paper. * * *

* * * * *

4. The fourth and fifth sentences of paragraph (b)(7) of Section 2.1033 are amended to read as follows. The rest of paragraph (b)(7), and the rest of Section 2.1033, remain unchanged.

Section 2.1033 Application for certification.

* * * * *

(b) * * *

(7) * * * Photographs shall be of size A4 (21 cm x 29.7 cm) or 8 x 10 inches (20.3 cm x 25.4 cm). Smaller photographs may be submitted provided they are sharp and clear, show the necessary detail, and are mounted on A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) paper. * * *

* * * * *

PART 15--RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

AUTHORITY: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154, 302, 303, 304, and 307.

2. The first sentence of paragraph (a) of Section 15.119 is amended to read as follows. The rest of paragraph (a), and the rest of Section 15.119, remain unchanged.

Section 15.119 Closed caption decoder requirements for television receivers.

(a) Effective July 1, 1993, all TV broadcast receivers with picture screens 33 cm (13 in) or larger in diameter shipped in interstate commerce, manufactured, assembled, or imported from any foreign country into the United States shall comply with the provisions of this section. * * *

* * * * *

PART 18--INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

1. The authority citation for Part 18 continues to read as follows:

AUTHORITY: 47 U.S.C. 4, 301, 302, 303, 304, 307.

2. Paragraph (b)(2) of Section 18.205 is amended to read as follows. The rest of Section 18.205 remains unchanged.

Section 18.205 Description of measurement facilities.

* * * * *

(b) * * *

(2) Physical description of the test site accompanied by photographs A4 (21 cm x 29.7 cm) or 8 x 10 inches (20.3 cm x 25.4 cm) in size. Photographs smaller than A4 (21 cm x 29.7 cm) or 8 x 10 inches (20.3 cm x 25.4 cm) will be acceptable if they are of sufficient clarity and mounted on A4 (21 cm x 29.7 cm) paper or paper 8 x 10 inches (20.3 cm x 25.4 cm).

* * * * *

PART 21--DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read as follows:

AUTHORITY: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602,: 48 Stat. 1064, 1066, 1070-1071, 1076, 1077, 1080 , 1082, 1083, 1087, 1094, 1098, 1102, as amended; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 313, 314, 403, 602; 47 U.S.C. 552.

2. Paragraph (b)(1) of Section 21.13 is revised to read as follows. The rest of paragraph (b), and the rest of Section 21.13, remains unchanged.

Section 21.13 General application requirements.

* * * * *

(b) * * *

(1) The information previously filed is over one A4 (21 cm x 29.7 cm) or

8.5 by 11 inch (21.6 cm x 27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under Section 1.65 of this chapter; and

* * * * *

3. Paragraphs (c)(1)(vii), (c)(2)(v) and (d)(1) of Section 21.23 are amended to read as follows. The rest of Section 21.23 remains unchanged.

Section 21.23 Amendment of applications.

* * * * *

(c) * * *

(1) * * *

(vii) Any change which increases the antenna height by 6.1 meters (20 feet) or more; or

* * * * *

(2) * * *

(v) Any change which increases the antenna height by 3.0 meters (10 feet) or more;

* * * * *

(d) * * *

(1) The geographic coordinates of the new station site are within 32.2 kilometers (20 miles) of the coordinates of the original site; and,

* * * * *

4. Paragraphs (b)(3), (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of Section 21.41 are amended to read as follows. The rest of Section 21.41 remains unchanged.

Section 21.41 Special processing of applications for minor facility modifications.

* * * * *

(b) * * *

(3) The facilities to be modified are not located within 56.3 kilometers (35 miles) of the Canadian or Mexican border;

* * * * *

(c) * * *

(2) * * *

(i) In all radio services except Multipoint Distribution Service and Digital Electronic Service, any increase in antenna height is less than 6.1 meters (20 feet) above the previously authorized height;

(ii) In Multipoint Distribution Service and Digital Electronic Message Service, any increase in antenna height is less than 3.0 meters (10 feet) above the previously authorized height; and

(iii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters (20 feet) or less (above ground or man-made structure, as appropriate) after the change is made.

* * * * *

5. Paragraphs (c)(5)(i) and (c)(5)(ii) of Section 21.42 are amended to read as follows. The rest of paragraph (c), and the rest of Section 21.42, remain unchanged.

Section 21.42 Certain modifications not requiring prior authorization.

* * * * *

(c) * * *

(5) * * *

(i) The new height (measured at the center-of-radiation) is within ±1.5 meters (5 feet) of the previously authorized height; and

(ii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters (20 feet) or less (above ground or man-made structure, as appropriate) after the change is made.

* * * * *

6. The first two sentences of paragraph (b) and all of paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv) of Section 21.113 are amended to read as follows. The table and accompanying notes at the end of the second sentence of paragraph (b), and the rest of Section 21.113, remain unchanged.

Section 21.113 Quiet zones.

* * * * *

(b) In order to minimize possible harmful interference at the Table Mountain Radio Receiving Zone of the Research Laboratories of the Department of Commerce located in Boulder County, Colorado, applicants for new or modified radio facilities in the vicinity of Boulder County, Colorado are advised to give due consideration prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. To prevent degradation of this present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals received on this 728.4 hectare (1800 acre) site (in the vicinity of coordinates 40° 07' 50'' N Latitude, 105° 14' 40'' W Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values: * * *

(1) * * *

(i) All stations within 2.4 kilometers (1.5 miles);

(ii) Stations within 4.8 kilometers (3 miles) with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 16.1 kilometers (10 miles) with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 80.5 kilometers (50 miles) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

* * * * *

(c) * * *

(3) * * *

(iii) Stations within 16.1 kilometers (10 miles) with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(iv) Stations within 80.5 kilometers (50 miles) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

* * * * *

7. Paragraphs (c)(1) and (c)(2) of Section 21.504 are amended to read as follows. The rest of Section 21.504 remains unchanged.

Section 21.504 Frequency interference.

* * * * *

(c) * * *

(1) An analysis of the potential for harmful interference with other stations if the coordinates of any proposed station are located within 80.5 km (50 miles) of the coordinates of any authorized, or previously proposed station(s) that utilize(s), or would utilize, the same frequency or an adjacent potentially interfering frequency; and

(2) An analysis concerning possible adverse impact on Canadian communications if the station's transmitting antenna is to be located within 56.3 km (35 miles) of the Canadian border.

* * * * *

8. Footnote 2 in paragraph (a) and paragraph (b) of Section 21.701 are amended to read as follows. The rest of paragraph (a), and the rest of Section 21.701, remain unchanged.

Section 21.701 Frequencies.

(a) * * *

2/ Except upon a showing that no alternative frequencies are available, no new assignments will be made in the band 2160-2162 MHz for stations located within 80.5 kilometers (50 miles) of the coordinates of the cities listed in Section 21.901(c) of this chapter.

* * * * *

(b) Applications for new stations or frequency paths (except for power splits of existing frequency paths) in the bands 3,700-4,200 MHz and 5,925-6,425 MHz which are to be used to relay television signals to community antenna relay television systems will not be accepted for filing or granted: Provided, however, That waivers of this provision may be granted for good cause shown, including a showing that the proposed frequency usage is not likely to affect adversely the development of any major communications route; and Provided further, That such waivers will not be granted, absent a showing of compelling and unusual circumstances, for new stations or frequency paths (except for power splits of existing frequency paths) within 80.5 kilometers (50 miles) of the coordinates of the principal city, as set forth in the U.S. Department of Commerce publication "Air Line Distance Between Cities in the United States," of one of the top 25 standard metropolitan statistical areas, as ranked by the U.S. Census Bureau.

* * * * *

9. The first two sentences of paragraph (c), all of paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii), (d)(1)(iv)(C), the first sentence of paragraph (d)(1)(vii) and all of paragraph (d)(5) of Section 21.901 are amended to read as follows. The table in paragraph (c), the rest of paragraph (d) and the rest of Section 21.901 remain unchanged.

Section 21.901 Frequencies.

* * * * *

(c) Channel 2 will be assigned only where there is evidence that no harmful interference will occur to any authorized point-to-point facility in the 2160-2162 MHz band. Channel 2 may be assigned only if the transmitting antenna of the station is to be located within 16.1 kilometers (10 miles) of the coordinates of the following metropolitan areas:

* * * * *

(d) * * *

(1) * * *

(i) Submit with its application an analysis demonstrating that operation of the applicant's transmitter will not cause harmful interference to any existing co-channel or adjacent-channel Instructional Television Fixed Service (ITFS) station with a transmitter site within 80.5 km (50 miles) of the Multichannel Multipoint Distribution Service (MMDS) applicant's proposed transmitter site;

* * * * *

(ii) Serve a copy of the analysis described in paragraph (d)(1)(i) of this section on the licensee of each co-channel or adjacent-channel ITFS station with a transmitter site located within 80.5 km (50 miles) of the MMDS applicant's proposed transmitter site;

(iii) Include in its application a certification of service demonstrating that, on or before the filing date of the application, a copy of the analysis described in paragraph (d)(1)(i) of this section was sent, certified mail, return receipt requested, to each licensee of a co-channel or adjacent-channel ITFS station with a transmitter site located within 80.5 km (50 miles) of the MMDS applicant's proposed transmitter site; and

(iv) * * *

(C) A list of each licensee of a co-channel or adjacent-channel ITFS station with a transmitter site within 80.5 km (50 miles) of the MMDS applicant's proposed transmitter site;

* * * * *

(vii) Notwithstanding the provisions of Section 21.31(a)(4) of this part, any licensee of an existing co-channel or adjacent-channel ITFS station with a transmitter site within 80.5 km (50 miles) of the MDS applicant's proposed transmitter site may file a petition to deny the application for an MDS station on the E or F channels within 90 days of the day of filing of the MDS application with the Commission. * * *

* * * * *

(5) Notwithstanding the provision of Section 21.31(a) all applications that propose to locate transmission facilities within or within 24.1 kilometers (15 miles) of the border of a Standard Metropolitan Statistical Area (SMSA) will be considered together. In the case of a Standard Consolidated Statistical Area (SCSA) all applications that propose to locate facilities within or within 24.1 kilometers (15 miles) of the boundary of any SMSA contained in the SCSA will be considered together. In those cases in which an applicant proposes to locate its transmission facilities so that it will be located in, or within 24.1 kilometers (15 miles) of, more than one SMSA, the applicant must specify which SMSA it intends to be its primary service area. Each application will be entitled to comparative consideration or to be included in a lottery in only one such service area.

* * * * *

10. Paragraphs (c)(1), (c)(4), (c)(5), (d)(1), (d)(2), (d)(3) and (i)(1) of Section 21.902 are amended to read as follows. The rest of paragraphs (c), (d) and (i) remain unchanged, as does the rest of Section 21.902.

Section 21.902 Frequency interference.

* * * * *

(c) * * *

(1) An analysis of the potential for harmful co-channel interference with any authorized or previously proposed station(s), if: (i) The proposed transmitting antenna has an unobstructed electrical path to any part of the protected service area of any other station(s) that utilize(s), or would utilize, the same frequency; or (ii) if the proposed transmitter is within 80.5 kilometers (50 miles) of the coordinates of any such station; or (iii) if the great circle path between the proposed transmitter and the protected service ares of any such station is 241.4 kilometers (150 miles) or less and 90 percent or more of the path is over water or within 16.1 kilometers (10 miles) of the coast or shoreline of the Atlantic Ocean, the Pacific Ocean, the Gulf of Mexico, any of the Great Lakes, or any bay associated with any of the above. (See Sections 21.701(a), 21.901(a) and 74.902 of this chapter);

* * * * *

(4) In the case of a proposal for use of channel 2, an analysis of the potential for harmful interference with any authorized point-to-point station located within 80.5 kilometers (50 miles) which utilizes the 2160-2162 MHz band; and

(5) An analysis concerning possible adverse impact upon Mexican and Canadian communications if the station's transmitting antenna is to be located within 56.3 kilometers (35 miles) of the border.

(d) * * *

(1) For a station using a transmitting antenna with an omnidirectional horizontal plane radiation pattern the boundary of the protected service area will be 24.1 kilometers (15 miles) from the transmitter site.

(2) For a station using a transmitting antenna with a non-omnidirectional horizonal plane radiation pattern the boundary of the protected service area will be the locus of all points located at instances from the transmitter as determined by the following equation;

$$Db = \frac{Dbmax}{\text{antilog } (Gbmax - G)/20}$$

in which the parameters are defined as follows:

Db = the distance from the transmitter site to the boundary in direction of interest;

G = the transmitter antenna gain in the direction of interest;

Gbmax = the maximum antenna gain;

Dbmax = the distance to boundary, in the direction of maximum gain that will make the total area of the protected service area equal to or less than 1838.8 square kilometers (710 square miles); all distances are in kilometers (miles), the gains are in dB relative to an isotropic antenna, and the antilog is taken to the base 10.

(3) Except that when the electrical horizon determined using the transmitting antenna height, a 9.1 meter (30 foot) receiving antenna height, and assuming 4/3 earth radius propagation conditions, is closer to the transmitter than boundary described in paragraph (d) (1) or (2) of this section, the electrical horizon shall be the boundary of the protected service area.

* * * * *

(i)

(1) For each application for stations in the 2596-2644 MHz, 2650-2656 MHz, 2662-2668 MHz, and 2674-2680 MHz frequency bands filed on or after December 30, 1991, the applicant must submit an analysis demonstrating that operation of the applicant's transmitter will not cause harmful interference to any existing, cochannel and adjacent-channel E-channel, F-channel, or G-channel instructional Television Fixed Service (ITFS) station, licensed or with a construction permit authorized, with a transmitter site within 80.5 kilometers (50 miles) of the coordinates of the Multichannel Multipoint Distribution Service (MMDS) or MDS H-channel station's proposed transmitter site.

* * * * *

(ii) In the alternative, an applicant for an MMDS station may submit an analysis demonstrating that there are no ITFS licenses or construction permitees, as described in paragraph (i)(1) of this section, within 80.5 km (50 miles) of the coordinates of the proposed transmitter site of the MMDS

station.

* * * * *

(j) * * *

(1) An analysis demonstrating that the modification will not increase the size of the geographic area suffering harmful interference within the protected service area of existing or proposed co-channel or adjacent-channel facilities in the 2596-2644 MHz frequency band with a transmitter site within 80.5 km (50 miles) of the modifying station's transmitter site if the initial application for the interfered-with station was filed on September 9, 1983; and

(2) An analysis demonstrating that the modification will not cause harmful interference to any new portion of the protected service area of existing or proposed co-channel or adjacent-channel facilities in the 2596-2644 frequency band with a transmitter site within 80.5 km (50 miles) of the modifying station's transmitter site, if the initial application for the interfered-with station was filed on September 9, 1983.

* * * * *

11. The first sentence of paragraph (c) of Section 21.904, up to the colon, is amended to read as follows. The rest of paragraph (c), and the rest of Section 21.904, remain unchanged.

Section 21.904 Transmitter power.

* * * * *

(c) An increase in station transmitter power, above currently-authorized or previously-proposed values, to the maximum values provided in subsections (a) and (b) of this section, may be authorized, if an applicant demonstrates that the requested power increase will not cause harmful interference to any authorized or previously-proposed co-channel or adjacent-channel station with a transmitter site within 80.5 kilometers (50 miles) of the applicant's transmitter site, or if an applicant demonstrates that: * * *

12. Paragraph (c) of Section 21.906 is amended to read as follows. The rest of Section 21.906 remains unchanged.

Section 21.906 Antennas.

* * * * *

(c) Transmitting antennas located within 56.3 kilometers (35 miles) of the Canadian border should be directed so as to minimize, to the extent that is practical, emissions toward the border.

* * * * *

13. In the first sentence of paragraph (d) of Section 21.913, the term

"50 miles" is replaced with "80.5 kilometers (50 miles)." In the first sentence of paragraph (g) of Section 21.913, the term "5 miles" is replaced with "8.0 kilometers (5 miles)." In the first sentence of paragraph (g)(4) of Section 21.913, the term "1 mile" is replaced with "1.6 kilometer (1 mile)." In the first sentence of paragraph (g)(6) of Section 21.913, the term "5 mile" is replaced with "8.0 kilometer (5 mile)." The rest of paragraphs (d) and (g), and the rest of Section 21.906, remain unchanged.

Section 21.913 Signal booster stations.

* * * * *

(d) * * * transmitters within 80.5 kilometers (50 miles) of the * * *

* * * * *

(g) * * * a transmitter within 8.0 kilometers (5 miles) of the * * *

* * * * *

(4) * * * located within a 1.6 kilometer (1 mile) radius of * * *

* * * * *

(6) * * * within an 8.0 kilometer (5 mile) radius of * * *

* * * * *

PART 22--PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154, 303.

2. The definition of "protected service area" in Section 22.2 is amended to read as follows. The rest of Section 22.2 remains unchanged.

Section 22.2 Definitions.

* * * * *

Protected service area. A fixed 32.2 km (20 mi) radius from a 900 MHz paging transmitter which is protected from harmful interference. For other frequency bands see reliable service area.

* * * * *

3. The fifth sentence of paragraph (d)(1), the third sentence of paragraph (d)(3) and paragraph (d)(3)(iv) of Section 22.6 are amended to read as follows. The rest of paragraph (d), and the rest of Section 22.6, remain unchanged.

Section 22.6 Filing of applications, fees, and numbers of copies.

* * * * *

(d) * * *

(1) * * * The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125 mm x 176 mm) or 5 x 7.5 inch envelope. * * *

* * * * *

(3) * * * The microfiche must depict the reduced A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) map (Application Exhibit II, See Section 22.924). * * *

* * * * *

(iv) A copy of each unserved area application must be served on the licensees for the same frequency block of any adjacent systems whose CGSA, MSA or RSA boundaries are within 80.4 km (50 mi) of the boundaries of the proposed system.

* * * * *

4. Paragraph (b)(1) of Section 22.13 is amended to read as follows. The rest of paragraph (b), and the rest of Section 22.13, remain unchanged.

Section 22.13 General application requirements.

* * * * *

(b) * * *

(1) The information previously filed is over one A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under Section 1.65 of this chapter; and

* * * * *

5. Paragraphs (b)(1)(i), (b)(1)(ii)(A), (b)(1)(ii)(B), (b)(1)(iii), (i)(2) and (j)(8)(vi) of Section 22.15 are amended as follows. The rest of paragraphs (b), (i) and (j) remain unchanged.

Section 22.15 Technical content of applications.

* * * * *

(b) * * *

(1) * * *

(i) One-way facilities from 35 to 162 MHz -- within 108 kilometers (67 miles).

(ii) * * *

(A) from 152 to 162 MHz -- within 135 kilometers (84 miles).

(B) from 450 to 460 MHz -- within 108 kilometers (67 miles).

(iii) Co-channel facilities within 201 kilometers (125 miles) when the bearing to the co-channel facility is within 22.5 degrees of a cardinal radial, where the effective radiated power exceeds the limits indicated in Section 22.505 for the center of radiation height above average elevation in that radial direction.

* * * * *

(i) * * *

(2) All applications for new or additional facilities will identify any other pending or concurrently filed applications in this service for new or additional facilities within a 64 kilometer (40 mile) radius of the proposed station that applicant, or any principal thereof, may be a party to or have an interest in, either directly or indirectly. All applications shall also identify all existing facilities within a 64 kilometer (40 mile) radius of the proposed station licensed to the applicant or in which the applicant has an ownership interest, regardless of call sign or licensee name.

* * * * *

(j) * * *

(8) * * *

(vi) 900 MHz one-way paging. Exact station location should be plotted on a map with a scale of 1:250,000 and the protected service area should be depicted by a 32 kilometer (20 mile) radius for each base station.

* * * * *

6. The first and second sentences of paragraph (c)(2) of Section 22.23 are amended to read as follows. The rest of paragraph (c)(2), and the rest of Section 22.23, remain unchanged.

Section 22.23 Amendment of applications. (See also Section 22.918)

* * * * *

(c) * * *

(2) Amendments to proposed base station facilities. If the amendment enlarges the reliable service area of the proposed base station facilities by

more than 1.6 kilometers (1 mile) along any of eight radials spaced every forty-five (45) degrees from zero degree True North. * * *

* * * * *

7. Paragraphs (c)(1) and (c)(2) of Section 22.33 are amended to read as follows. The rest of paragraph (c), and the rest of Section 22.33, remain unchanged.

Section 22.33 Grants by random selection.

* * * * *

(c) * * *

(1) An applicant proposing to add one or more transmitter locations to an authorized station on the same frequency or frequencies for which it is already licensed and within 64 kilometers (40 miles) of existing transmitter locations on those frequencies, and when the applicant demonstrates in its application a demand by its existing subscribers for the expanded service; or

(2) An applicant proposing to add one or more frequencies to an authorized station at the same location or other locations within 64 kilometers (40 miles) of an existing transmitter location, if the frequencies to be added are in the same frequency band as those already authorized (i.e., low-band (35-43 MHz), VHF (150 MHz), UHF (450 MHz) or 900 MHz).

8. Paragraph (d)(1)(iii), the first two sentences of paragraph (d)(4)(iii), notes A at the end of paragraph (d), the first two sentences of note B at the end of paragraph (d) and paragraphs (2) and (3) of note C at the end of paragraph (d) of Section 22.43 are amended to read as follows. The rest of paragraph (d), the rest of note C at the end of paragraph (d), the table in paragraph (3) of note C at the end of paragraph (d), and the rest of Section 22.43 remain unchanged.

Section 22.43 Period of construction.

* * * * *

(d) * * *

(1) * * *

(iii) Applicants who have filed applications or amendments which request expansion of the reliable service area of a PLMS base station facility by less than 1.6 kilometers (1 mile). Cf. Section 22.23(c)(2) of the rules;

* * * * *

(4) * * *

(iii) Applications and amendments to expand the reliable service area of a

PLMS base station by less than 1.6 kilometers (1 mile). Applications and amendments which request expansion of the reliable service area of a PLMS base station facility by less than 1.6 kilometers (1 mile), see Section 22.43(d)(1)(iii), shall not be subject to the general rules set out in Section 22.43 (d)(2)(i). * * *

* * * * *

NOTE A: Pursuant to an agreement between the Commission and the Department of Communications in Canada, Commission authorizations issued for cellular facilities built within 72 kilometers (45 miles) of the U.S.-Canadian border shall have the following condition attached:

This authorization is subject to the condition that, in the event that cellular systems using the same frequency block as granted herein are authorized in adjacent territory in Canada, coordination of any of your transmitter installations which are within 72 kilometers (45 miles) of the U.S.-Canadian border shall be required to eliminate any harmful interference that might otherwise exist and to ensure continuance of equal access to the frequency block by both countries.

NOTE B: Pursuant to an agreement between the United States and Mexico, Commission authorizations issued for cellular facilities built within 72 kilometers (45 miles) of the U.S.-Mexican border, or whose 39 dBu contour extends into Mexico, shall have the following condition attached:

This authorization is subject to the condition that, in the event that cellular systems using the same frequencies granted herein are authorized in adjacent territory in Mexico, coordination of your transmitter installations which are within 72 kilometers (45 miles) of the U.S.-Mexico border shall be required to eliminate any harmful interference that might otherwise exist to ensure continuance of equal access to the frequencies by both countries. * * *

NOTE C: * * *

* * * * *

(2) Stations located within 161 kilometers (100 miles) of the coordinates listed below.

(3) Stations located within 402 kilometers (250 miles) of the Canadian border receive station coordinates listed below and within ± 30 degrees of the given azimuth (from the Canadian station).

* * * * *

9. Section 22.100 is amended to read as follows:

Section 22.100 Frequencies, interference.

* * * * *

(e) * * *

(1) The distance to the 115 dBu contour is determined using the following equation:

$$d = 0.394 \times p^{1/2}$$

where d is the distance in kilometers and p is the maximum effective radiated power in kilowatts.

* * * * *

10. Section 22.113 is amended to read as follows:

Section 22.113 Quiet zones.

* * * * *

(b) * * *

(1) * * *

(i) All stations within 2.4 kilometers (1.5 miles);

(ii) Stations within 4.8 kilometers (3 miles) with 50 watts or more * * *

(iii) Stations within 16 kilometers (10 miles) with 1 kW or more * * *

(iv) Stations within 80 kilometers (50 miles) with 25 kW or more * * *

* * * * *

11. Section 22.115 is amended to read as follows:

Section 22.115 Computation of average terrain elevation.

Except in cases of dispute, average terrain elevation may be calculated by computer using elevations from a 30 second point or better topographic data file. The data file used must be identified. If a 30 second point data file is used, the elevation data must be processed for intermediate points using interpolation techniques; for a 3 second point data file, the nearest point may be used. In cases of dispute, average terrain elevation determinations must be done manually, using 1:24,000 scale topographic maps.

(a) Radial average terrain elevation is calculated by taking the arithmetic mean of the elevations of a series of points between 3 and 16 kilometers (2 and 10 miles) from the antenna site along a straight line path extending radially from the antenna site. If a portion of the radial path extends over foreign territory or water, such portion must not be included in the computation of average elevation unless the radial path again passes over United States land between 16 and 134 kilometers (10 and 83 miles) away from the antenna site. At least 50 approximately evenly spaced data points for each radial should be used in the computation.

(b) The average terrain elevation at an antenna site is the average of

eight radial average terrain elevations in the following azimuths: 0°, 45°, 90°, 135°, 180°, 225°, 270° and 315° with respect to true North.

(c) In Dade and Broward Counties, Florida, average terrain elevation is assumed to be 3 meters (10 feet) above mean sea level.

12. Section 22.117 is amended to read as follows:

Section 22.117 Transmitters.

* * * * *

(b) * * *

(3) Full FAA approval has been obtained. The notification shall state that such clearance has been granted; or if it is a new antenna structure it does not exceed 6 meters (20 feet) in height, or * * *

* * * * *

(c) 800 MHz Air-Ground Radiotelephone Service. Air-ground licensees may construct and operate additional ground stations less than 1.6 kilometers (1 mile) from the stations * * *

* * * * *

13. In paragraph (j)(7)(i) of Section 22.501 Table G is removed and reserved, Figure A, Figure B, and the notes following them are removed, new Tables I and J are added, and the rest of the section is amended to read as follows:

Section 22.501 Frequencies.

(a) * * *

(5) * * *

(i) Applicants that request 43 MHz applications listed in paragraph (a)(4) shall explicitly state whether or not there are any existing co-channel two-way facilities within 201 kilometers (125 miles) of the proposed * * *

* * * * *

(iii) In accordance with Section 22.406 semi-annual surveys of possible interference with television and video recorder reception in the geographic area within a 3.2 kilometer (2 mile) radius of the base station(s) authorized herein shall be made during the first year of operation. For each survey, a different sample of at least 25 television viewers distributed approximately evenly throughout the geographic area described above shall be contacted to determine whether they have experienced TV or video recorder interference. The data should not be distorted by surveying few or no viewers within the geographic area proximate to the antenna. Therefore, for each report, the

25 television viewers geographically nearest the base station who have not previously been surveyed, shall be surveyed. In the event that all viewers within 3.2 kilometers (2 miles) have been surveyed * * *

* * * * *

(e) On a shared basis with fixed stations in the Point-to-Point Microwave Radio Service, frequencies in the bands 2110-2130 MHz and 2160-2180 MHz may be authorized for use by control and repeater stations functioning in conjunction with the Public Land Mobile Service. The emission band-width shall be limited to the minimum necessary to serve the purpose required, including the applicant's future growth plans. No new assignments will be made in the 2160-2162 MHz band for stations located within 80 kilometers (50 miles) of the * * *

(f) * * *

(1) * * *

(i) Between 16 and 129 kilometers (10 and 80 miles). If an applicant proposes to locate a 72-76 MHz band fixed station between 16 and 129 kilometers (10 and 80 miles) from the * * *

(ii) Less than 16 kilometers (10 miles). Applications for use of 72-76 MHz band frequencies less than 16 kilometers (10 miles) from Channel 4 or 5 television stations will be granted developmental authority pursuant to Section 22.400 et seq. After successful developmental testing an application for a radio station authorization must follow the requirements of Section 22.501(f)(1)(i). Where the proposed transmitter is co-located with the television transmitter the application will be processed according to the 16-129 kilometer (10-80 mile) standard. Applicants must identify by call sign, all channel 4 and 5 stations within 16 kilometers (10 miles) of the proposed transmitter sites.

* * * * *

(g) * * *

(3) * * *

(i) The separation between co-channel control stations shall be 113 kilometers (70 miles).

* * * * *

(j) * * *

(3) The transmitter site(s) for base station(s) shall be located not more than 80 kilometers (50 miles) from the geographic center of an urbanized area as defined in Table A.

(4) Mobile stations must not be operated at locations more than 129 kilometers (80 miles) from the "Geographic Center" of the appropriate urbanized area as defined in Table A of this section. Mobile stations must not be operated at locations that are more than 48 kilometers (30 miles) from all associated base stations.

(5) * * *

(i) Base stations shall be located a minimum of 1.6 kilometers (1 mile) from local television stations operating on TV channels separated by 2, 3, 4, 5, 7, and 8 TV channels from the television channel in which the base station will operate.

(ii) Mobile units operating on the frequencies available for land mobile use in any given urbanized area shall afford protection to co-channel television stations in accordance with the values set out in Table D of this section. Associated base transmitter locations must be at least 145 kilometers (90 miles) from protected television stations when land mobile stations transmit in the adjacent television channel.

* * * * *

(6) For antenna heights between 152 and 914 meters (500 and 3000 feet) above average terrain the effective radiated power must be reduced below 1 kilowatt in accordance with the values shown in Table I of this section. For heights of more than 152 meters (500 feet) above average * * *

(7) Applicants for base stations in the Miami, Fla., urbanized area may, in lieu of calculating the height of average terrain, use 3.2 meters (10 feet) as average terrain height.

(i) * * *

* * * * *

TABLE B - Antenna heights of 152 meters (500 feet) or less above average terrain. For antenna heights between those in the table, use the next higher antenna height. For distances between those in the table, use the next lower distance.

Maximum ERP (Watts) for Base Transmitters

Distance to Protected TV Station Location in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)									
	15 (50)	30 (100)	46 (150)	61 (200)	76 (250)	91 (300)	107 (350)	122 (400)	137 (450)	152 (500)
261 (162)	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
257 (160)	1000	1000	1000	1000	1000	1000	1000	1000	1000	800
249 (155)	1000	1000	1000	1000	1000	875	775	700	625	575
241 (150)	1000	1000	950	775	725	625	550	500	450	400
233 (145)	850	750	650	575	500	440	400	350	320	300
225 (140)	600	575	465	400	350	300	275	250	230	225
217 (135)	450	400	335	300	255	240	200	185	165	150
209 (130)	350	300	245	200	185	160	145	125	120	100
201 (125)	225	200	170	150	125	110	100	90	80	75
193 (120)	175	150	125	105	90	80	70	60	55	50

TABLE C - Antenna heights of 152 meters (500 feet) or less above average terrain. For antenna heights between those in the table, use the next higher antenna height. For distances between those in the table, use the next lower distance.

Maximum ERP (Watts) for Base Transmitters

Distance to Specified Location in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)								
	30 (100)	46 (150)	61 (200)	76 (250)	91 (300)	107 (350)	122 (400)	137 (450)	152 (500)
108 (67)	1000	1000	1000	1000	1000	1000	1000	1000	1000
106 (66)	1000	1000	1000	1000	1000	1000	1000	1000	750
105 (65)	1000	1000	1000	1000	1000	1000	825	650	600
103 (64)	1000	1000	1000	1000	1000	775	625	500	400
101 (63)	1000	1000	1000	1000	440	400	350	320	300
100 (62)	1000	1000	1000	525	375	250	200	150	125
98 (61)	1000	700	450	250	200	125	100	75	50
97 (60)	1000	425	225	125	100	75	50		

TABLE D - Minimum distance between associated base station and protected co-channel television station where mobile transmits in the same television channel.

Mobile unit ERP	Minimum distance	
60 watts	225 kilometers	(140 miles)
50	217	(135)
25	201	(125)
10	188	(117)
5	180	(112)

* * * * *

TABLE F - Antenna heights of 152 meters (500 feet) or less above average terrain. For antenna heights between those in the table, use the next higher antenna height. For distances between those in the table, use the next lower distance.

Maximum ERP (Watts) for Base Transmitters

Distance to Protected TV Station Location in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)									
	15 (50)	30 (100)	46 (150)	61 (200)	76 (250)	91 (300)	107 (350)	122 (400)	137 (450)	152 (500)
209 (130)	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
201 (125)	1000	1000	1000	1000	1000	1000	1000	850	750	725
193 (120)	1000	1000	1000	1000	900	750	675	600	550	500
185 (115)	1000	1000	800	725	600	525	475	425	375	350
177 (110)	850	700	600	500	425	375	325	300	275	225
169 (105)	600	475	400	325	275	250	225	200	175	150
161 (100)	400	325	275	225	175	150	140	125	110	100
153 (95)	275	225	175	125	110	95	80	70	60	50
145 (90)	175	125	100	75	50					

TABLE G - [reserved]

* * * * *

TABLE I - Antenna heights of more than 152 meters (500 feet) above average terrain. For intermediate values of height and/or distance, use linear interpolation to obtain the maximum permitted ERP.

Maximum ERP (Watts) for Control Transmitters

Antenna Height Above Average Terrain in meters (feet)

		152 (500)	305 (1000)	457 (1500)	610 (2000)	762 (2500)	914 (3000)
Distance to Protected TV Station Location in kilometers (miles)	261 (162)	1000	501	282	170	110	71
	241 (150)	400	209	110	60	36	23
	225 (140)	225	102	50	28	16	10
	209 (130)	100	48	21	11	7	5
	193 (120)	50	19	9	5	3	2

TABLE J - Antenna heights of more than 152 meters (500 feet) above average terrain. For intermediate values of height and/or distance, use linear interpolation to obtain the maximum permitted ERP.

Maximum ERP (Watts) for Control Transmitters

Antenna Height Above Average Terrain in meters (feet)

		152 (500)	305 (1000)	457 (1500)	610 (2000)	762 (2500)	914 (3000)
Distance to Protected TV Station Location in kilometers (miles)	209 (130)	1000	447	219	117	71	46
	193 (120)	500	209	95	50	30	19
	177 (110)	225	91	35	19	11	8
	161 (100)	100	30	10	5	3	2
	153 (95)	50	13	5	3	2	1

* * * * *

(k) * * *

(1) Control stations must be located within 80 kilometers (50 miles) of the center city coordinates listed in paragraph (k)(3) of this section.

(2) Control stations may transmit with 1000 watts effective radiated power and an antenna center of radiation height above average terrain of 152 meters (500 feet).

* * * * *

(5) * * *

(iv) For antenna heights between 152 and 914 meters (500 and 5,000 feet) above average terrain the effective radiated power must be reduced below 1 kW in accordance with the values shown in Table I of Section 22.501(j) except for

channel 15 in New York, N.Y., and Cleveland, Ohio and channel 16 in Detroit, Mich., where the effective radiated power must be reduced in accordance with Table J. For heights of more than 152 meters (500 feet) above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the grade B contour authorization will * * *

* * * * *

14. Section 22.502 is amended by revising paragraph (b) and the tables in paragraphs (a) and (c), as follows:

Section 22.502 Classification of base stations.

(a) * * *

Class of Public Land Mobile Station

Antenna HAAT in meters (feet)	Effective Radiated Power (watts)				
	30 or less	31-60	61-120	121-250	251-500
123 to 152 (401 to 500)	C	B	B	A	A
92 to 122 (301 to 400)	C	C	B	B	A
61 to 91 (201 to 300)	D	C	C	B	B
31 to 60 (101 to 200)	D	D	C	C	B
30 or less (100 or less)	E	D	D	C	C

(b) Any station with antenna height more than 152 meters (500 feet) above average terrain and effective radiated power within the limits in Section 22.505 is considered to be a Class A station.

(c) * * *

Class of 931 MHz Paging Station

Antenna HAAT in meters (feet)	Effective Radiated Power (watts)					
	125 or less	126-250	251-500	501-1000	1001-1860	1861-3500
1220 to 1524 (4001 to 5000)	G	G	F	F	F	F
862 to 1219 (2826 to 4000)	H	G	G	F	F	F
611 to 861 (2001 to 2825)	K	H	H	G	F	F
428 to 610 (1401 to 2000)	L	K	H	G	G	G
306 to 427 (1001-1400)	L	L	K	H	G	G
178 to 305 (581-1000)	L	L	L	L	K	H
177 or less (580 or less)	L	L	L	L	L	L

15. Section 22.503 is amended by revising the tables in paragraphs (a), (b) and (d), and the text in paragraph (c) to read as follows:

Section 22.503 Geographic separation of co-channel stations.

(a) * * *

Minimum Required Distance Separation Between Co-channel Stations using VHF frequencies listed in Section 22.501(b), in kilometers (miles)

Station Class	A	B	C	D	E
A	135 (84)	129 (80)	121 (75)	113 (70)	106 (66)
B	129 (80)	119 (74)	111 (69)	103 (64)	97 (60)
C	121 (75)	111 (69)	93 (58)	87 (54)	80 (50)
D	113 (70)	103 (64)	87 (54)	71 (44)	64 (40)
E	106 (66)	97 (60)	80 (50)	64 (40)	48 (30)

Minimum Required Distance Separation Between Co-channel Stations
using UHF frequencies listed in Section 22.501(b), in kilometers (miles)

Station Class	A	B	C	D	E
A	108 (67)	103 (64)	98 (61)	93 (58)	89 (55)
B	103 (64)	93 (58)	87 (54)	82 (51)	76 (47)
C	98 (61)	87 (54)	76 (47)	71 (44)	68 (42)
D	93 (58)	82 (51)	71 (44)	60 (37)	55 (34)
E	89 (55)	76 (47)	68 (42)	55 (34)	42 (26)

(b) * * *

Minimum Required Distance Separation Between Co-channel Stations
using VHF one-way paging frequencies, in kilometers (miles)

Station Class	A	B	C	D	E
A	108 (67)	103 (64)	95 (59)	90 (56)	85 (53)
B	103 (64)	93 (58)	87 (54)	82 (51)	76 (47)
C	95 (59)	87 (54)	72 (45)	68 (42)	61 (38)
D	90 (56)	82 (51)	68 (42)	55 (34)	52 (32)
E	85 (53)	76 (47)	61 (38)	52 (32)	48 (30)

(c) In any particular case, where it appears that unusual radio wave propagation conditions are involved, the Commission may require greater separation than indicated in the tables in paragraphs (a) and (b) of this section, or make assignments at lesser station spacings. Reference may be made to Section 73.611(d) of this chapter for methods of computing distance separation between station locations.

(d) * * *

Minimum Required Distance Separation Between Co-channel Stations using UHF one-way paging frequencies, in kilometers (miles)

Station Class	L	K	H	G	F
L	113 (70)	121 (75)	129 (80)	163 (101)	224 (139)
K	121 (75)	126 (78)	134 (83)	167 (104)	229 (142)
H	129 (80)	134 (83)	138 (86)	172 (107)	233 (145)
G	163 (101)	167 (104)	172 (107)	187 (116)	248 (154)
F	224 (139)	229 (142)	233 (145)	248 (154)	275 (171)

16. Section 22.504 is amended by removing Figures 1, 2, 3, and 4, and by revising paragraph (b)(1) and the table in paragraph (b)(2) to read as follows:

Section 22.504 Reliable service area.

* * * * *

(b) * * *

(1) The field strength contours described in paragraph (a) of this section determine the limits of the reliable service area of stations other than those transmitting in the 931-932 MHz frequency range for the purpose of providing protection to such stations from co-channel harmful interference and for defining the area within which consideration will be accorded claims of economic competitive injury. The propagation curves contained in FCC Report No. R-6406, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service", by Roger B. Carey must be used in determining areas of reliable service and interference.

(2) * * *

Radius in kilometers (miles)

Station Class	F	G	H	K	L
Service Area	84 (52)	56 (35)	42 (26)	37 (23)	32 (20)
Interfering Contour	192 (119)	130 (81)	97 (60)	89 (55)	80 (50)

* * * * *

(c) All applications for base station authorization (Form 401) shall show the maximum distance from the base station to the reliable service area contour as determined from each of the eight radials shown in Section 22.115(a)(1)

and (b).

17. Section 22.505 is amended as follows:

Section 22.505 Antenna height-power limit.

(a) * * *

(1) Base stations, other than in the air-to-ground radio service and in the 470-512 MHz and the 929-932 MHz bands, with antennas more than 152 meters (500 feet) above average terrain shall not exceed the effective radiated power as provided in the table below.

(2) * * *

Antenna HAAT in meters (feet)	Maximum ERP in watts
152 (500)	500
168 (550)	397
183 (600)	323
213 (700)	223
244 (800)	166
274 (900)	126
305 (1000)	98
381 (1250)	57
457 (1500)	37
610 (2000)	20
762 (2500)	13
914 (3000)	10
1067 (3500)	9
1219 (4000)	8
1524 (5000	7

* * * * *

(b) * * *

Antenna HAAT in meters (feet)	Maximum ERP in watts
1524 (5000)	65
1372 (4500)	70
1219 (4000)	75
1067 (3500)	100
914 (3000)	140
762 (2500)	200
610 (2000)	350
457 (1500)	600
305 (1000)	1000

(c) * * *

(1) Stations in the 35, 43, 152, and 454 MHz bands, operating in accordance with Section 22.506(f), that exceed 500 watts effective radiated power, shall calculate their interference contours along all radials exceeding 500 watts and 152 meters (500 feet) above average terrain using the following modification to the formula in the Carey Report for determining the ratio of desired to undesired fields "R":

$$R = A + C + K(L_d^2+L_u^2+T_u^2)^{1/2}$$

where C is determined from the following formula:

$$C = 10 \times \log(HAAT/152)$$

with HAAT in meters.

* * * * *

18. Section 22.506 is amended to read as follows:

Section 22.506 Power.

* * * * *

(f) * * *

(1) All applications proposing the use of the frequencies 152.24, 152.84, 158.10, 158.70, and 454.025 MHz operating with effective radiated powers above 500 watts must show that their base stations are located a required distance from adjacent channel stations: 5 kilometers (3.2 miles) for the 152 MHz band and 7 kilometers (4.4 miles) for the frequency 454.025 MHz. All applicants for these adjacent channel frequencies must submit a study of the Commission's Master Frequency File showing that the required separation distances to the adjacent channel base stations have been met. In addition, any common carrier stations operating on 158.70 and 158.10 MHz at powers greater than 500 watts, must submit an analysis of the common carrier land mobile base station cumulative staff study showing that they are located more than 5 kilometers (3.2 miles) from common carrier stations operating on the base channels 152.21 and 152.81 MHz respectively.

* * * * *

19. Section 22.521 is amended to read as follows:

Section 22.521 Air-ground radiotelephone service.

* * * * *

(b) Locations. Base stations may be assigned the following channels and shall be located within 40 kilometers (25 miles) of the coordinates specified, or if none, the main post office: * * *

* * * * *

20. Section 22.525 is amended to read as follows:

Section 22.525 One-way signaling stations.

* * * * *

(b) An applicant requesting a new 900 MHz one-way signaling station will be deemed to be requesting additional frequencies for its existing station if there is less than 64 kilometers (40 miles) distance between the applicant's existing base station and its proposed base station. An existing 900 MHz licensee requesting a one-way frequency will be deemed to be requesting an additional frequency if its proposed base station is less than 64 kilometers (40 miles) from its existing 900 MHz base station.

* * * * *

(e) An applicant filing an application for a 900 MHz paging frequency at a location within 64 kilometers (40 miles) of a pending one-way application, without dismissing the previously filed pending application, will be treated as amending the previous application. The amended application will be considered newly filed and subject to the applicable cut-off procedures. A pending 900 MHz application will be amended by a subsequent application for any one-way paging frequency, if the base station location is within 64 kilometers (40 miles) of the location requested in the pending 900 MHz application.

* * * * *

21. Section 22.601 is amended to read as follows:

Section 22.601 Frequencies.

(a) * * *

(2) * * *

(i) Rural radio service licensees may not use these frequencies within 161 kilometers (100 miles) of the border of the top 54 SMSAs as defined in the Domestic Cellular Radio Service;

* * * * *

(iv) The same frequency group may not be reassigned to a base station within 113 kilometers (70 miles) of another base station on the same channels or channels offset by 12.5 kHz;

* * * * *

(3) For the Canadian Regions and within 110 kilometers (68 miles) of the Mexican border, the frequencies in paragraph (c) of this section are not available.

* * * * *

(g) * * *

(3) Co-channel central office stations of different licensees shall be located at least 241 kilometers (150 miles) apart. A subscriber station and a central office station of different licensees shall be located at least 241 kilometers (150 miles) apart if the * * *

* * * * *

22. Section 22.902 is amended to read as follows:

Section 22.902 Frequencies.

* * * * *

(d) * * *

(1) All permittees or licensees in the Domestic Public Cellular Radio Telecommunications Service shall coordinate proposed frequency usage with existing users in Cellular Geographic Service Areas within 121 kilometers (75 miles) of all * * *

* * * * *

23. Section 22.903 is amended to read as follows:

Section 22.903 Cellular geographic service area.

* * * * *

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, the radial distance from a cell transmitting antenna to its service area boundary is calculated as follows:

$$d = 2.531 \times h^{0.34} \times p^{0.17}$$

where d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

(2) For the cellular systems authorized to serve the Gulf of Mexico MSA, the radial distance from a cell transmitting antenna to its service area boundary is calculated as follows:

$$d = 6.895 \times h^{0.30} \times p^{0.15}$$

where d is the radial distance in kilometers

h is the radial antenna HASL or HAMSL in meters
p is the radial ERP in Watts

(3) The value used for h in the formula in paragraph (a)(2) of this section must not be less than 8 meters (26 feet) HASL (or HAMSL, as appropriate for the support structure). The value used for h in the formula in paragraph (a)(1) of this section must not be less than 30 meters (98 feet) HAAT, except that for unserved area applications proposing a cell with an ERP not exceeding 10 Watts, the value for h used in the formula to determine the service area boundary for that cell may be less than 30 meters (98 feet) HAAT, but not less than 3 meters (10 feet) HAAT.

* * * * *

(5) Whenever use of the formula in paragraph (a)(1) of this section pursuant to the exception contained in paragraph (a)(3) of this section results in a calculated distance that is less than 5.4 kilometers (3.4 miles), the radial distance to the service area boundary is deemed to be 5.4 kilometers (3.4 miles).

24. Section 22.905 is amended to read as follows:

Section 22.905 Antenna height-power for base stations.

In view of the fact that the predominant characteristic of cellular systems is frequency reuse within a given service area, the effective radiated power (ERP) of base stations with transmitting antennas in excess of 152 meters (500 feet) above average terrain (AAT) must be reduced as shown in the table below, unless coordination is performed and agreements are reached with all neighboring carriers that are within 120 kilometers (75 miles).

Antenna HAAT in meters (feet)	Maximum ERP in watts
152 (500)	500
168 (550)	397
183 (600)	323
213 (700)	223
244 (800)	166
274 (900)	126
305 (1000)	98
381 (1250)	57
457 (1500)	37
610 (2000)	20
762 (2500)	13
914 (3000)	10
1067 (3500)	9
1219 (4000)	8
1524 (5000)	7

For AATs between the above listed values, linear interpolation should be

used.

25. Section 22.913 is amended to read as follows:

Section 22.913 Content and form of MSA and NECMA applications.

(a) * * *

(1) * * * In addition, this exhibit shall include an A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) reduced copy of the 1:250,000 scale map required by Section 22.903(a).

* * * * *

(c) * * * In addition, each applicant shall submit two microfiche copies of its application using a B6 (125 mm x 176 mm) or 4 x 6 inch (102 mm x 152 mm) positive or negative copy microform, * * *

* * * * *

26. Section 22.923 is amended to read as follows:

Section 22.923 Content and form of Rural Service Area applications.

(a) * * *

(1) * * * In addition, this exhibit shall include an A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) reduced copy of * * *

* * * * *

(b) * * *

(1) Two microfiche copies of each application must be submitted and enclosed in microfiche jackets and be placed in a sealed B6 (125 mm x 176 mm) or 5 x 7.5 inch microfiche envelope. * * *

* * * * *

(5) * * * In addition the applicant's name and the market, market number, and frequency block must also appear on a B6 (125 mm x 176 mm) or 5 x 7.5 inch microfiche envelope, which * * *

(6) The completed transmittal sheet, the filing fee, and the microfiche envelope shall be placed in a C4 (229 mm x 324 mm) or 9 x 12 inch sealed envelope. * * *

* * * * *

27. Paragraph (a)(1) and the first sentence of paragraph (b)(2) of Section 22.924 are amended to read as follows. The rest of paragraphs (a), (b)(2) and (b), and the rest of Section 22.924, remain unchanged.

Section 22.924 Content and form of applications for unserved areas.

(a) * * *

(1) Applications for unserved areas must propose a minimum geographical coverage of 130 contiguous square kilometers (50 contiguous square miles).

* * * * *

(b) * * *

(2) Exhibit II - A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) reduced map. * * *

* * * * *

28. Paragraph (b) of Section 22.925 is amended to read as follows. The rest of Section 22.925 remains unchanged.

Section 22.925 System information update.

* * * * *

(b) The reduced map must be a proportional reduction, to A4 (21 cm x 29.7 cm) or 8.5 x 11 inches (21.6 cm x 27.9 cm), of the full-size map required in paragraph (a) of this section, unless it proves to be impractical to depict the entire cellular market by reducing the full-size map. In such instance, an A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) map of a different scale may be substituted, provided that the required features of the full-size map are clearly depicted and labeled.

29. Section 22.930 is amended to read as follows:

Section 22.930 Special provisions for alternative cellular technologies and auxiliary services.

* * * * *

(h) Operations under the cellular service option are subject to frequency coordination in accordance with Section 22.902(d) and the following requirements. The cellular system operator must perform an engineering analysis to ensure that interference will not occur from implementation of auxiliary services or alternative cellular technologies. The operator must obtain the concurrence of other cellular systems on the same frequency block within 121 kilometers (75 miles).

30. In Table A following Section 22.1001 paragraph (a), remove the words "3-mile" and add, in their place, the words "5-kilometer (3-mile)".

31. In Table B following Section 22.1001 paragraph (b), remove the words "3-mile" and add, in their place, the words "5-kilometer (3-mile)".

32. In Table C following Section 22.1001 paragraph (c), remove the words "3-mile" and add, in their place, the words "5-kilometer (3-mile)".

33. In Table C following Section 22.1001 paragraph (c), remove the words "175 mile" and add, in their place, the words "282-kilometer (175-mile)"

34. Section 22.1001 is further amended to read as follows:

Section 22.1001 Frequencies.

* * * * *

(d) * * *

(2) * * *

(i) Using the method specified in Section 73.611, determine the distance between the proposed station and the protected co-channel television station. If the exact distance does not appear in Table D of this paragraph (d), the next lower distance separation figure is to be used.

(ii) Enter the table at the distance figure found in paragraph (d)(2)(i) of this section. Opposite this distance figure, ERPs are given that may be used for antenna heights of 30, 46, or 61 meters (100, 150, or 200 feet) above sea level. If the exact antenna height is not shown, the ERP allowed will be that shown for the next higher antenna height.

(4) No airborne subscriber station shall be operated with an effective radiated power in excess of 1 watt or at heights in excess of 305 meters (1,000 feet) above mean sea level. Airborne subscriber stations using Channel 17 frequencies shall not be operated outside the limits of the Zone specified in Table A of this section. Further, to provide adjacent channel protection to TV Channel 18, these stations shall not operate within a 129 kilometer radial distance to Lake Charles, Louisiana. Airborne subscriber stations using Channel 16 frequencies shall not be operated outside the limits of the Zone specified in Table B of this section. Further, to provide adjacent channel protection to TV Channel 15, these stations shall not operate within a 129 kilometer (80 mile) radial distance to Lafayette, Louisiana. Airborne subscriber stations using Channel 15 frequencies shall not be operated outside the limits of the Zone specified in Table C of this section. Further, to provide adjacent channel protection to TV Channels 14 and 16, these stations shall not operate within a 129 kilometer (80 mile) radial distance of either Corpus Christi or Houston, Texas.

(5) Antenna heights in excess of 61 meters (200 feet) above mean sea level will not be authorized, except that surface mobile stations will be limited to a height of 10 meters (30 feet) above the water line.

(6) Mobile stations shall not operate with an effective radiated power in excess of 25 watts within 32.2 km (20 miles) of the 5 kilometer (3 mile) limit. In all other Zones, the effective radiated power shall not exceed 100 watts.

(7) * * *

TABLE D - Protection of Co-channel Full Service Television Stations by Stations in the Offshore Radio Telecommunications Service

[65 dB protection]

Distance from ORTS transmitter to TV station in kilometers (miles)	Antenna Height Above Mean Seal Level in meters (feet)		
	30 (100)	46 (150)	61 (200)
338 (210)	1000	1000	1000
330 (205)	1000	900	800
322 (200)	800	710	630
314 (195)	590	520	450
306 (190)	450	400	330
298 (185)	320	280	240
290 (180)	250	210	175
282 (175)	180	150	130
274 (170)	175	110	100
265 (165)	95	80	70
258 (160)	65	55	50
249 (155)	50	40	35
241 (150)	35	30	25

NOTE: No ORS station shall operate less than 241.4 km (150 mi) from any full service co-channel TV station.

TABLE E - Protection of Adjacent Channel Full Service Television Stations by Stations in the Offshore Radio Telecommunications Service

[0 dB protection]

Distance beyond the 5-kilometer (3-mile) limit in kilometers (miles)	Antenna height above sea level in meters (feet)	
	30 (100)	61 (200)
6 (4)	25	6
8 (5)	40	10
10 (6)	65	15
11 (7)	100	25
13 (8)	150	35
14 (9)	215	50
16 (10)	295	70
18 (11)	400	100
19 (12)	530	130
21 (13)	685	170
23 (14)	870	215
24 (15)	1000	270
26 (16)	1000	415
27 (17)	1000	505
29 (18)	1000	610
31 (19)	1000	730
32 (20)	1000	865
34 (21)	1000	1000

NOTE: Table E of this paragraph (d) applies only within a 128.8 km (80 mi) radial distance of full service adjacent channel TV stations.

* * * * *

35. Section 22.1002 is amended to read as follows:

Section 22.1002 Power limitations.

Stations in this service will not be permitted to exceed 1000 watts effective radiated power provided, however, that the effective radiated power of mobile stations operating within 32 kilometers (20 miles) of the 5 kilometer (3 mile) limit shall * * *

36. Section 22.1109 is amended to read as follows:

Section 22.1109 Initial geographical channel block layout.

Except as provided in paragraph (b) of this section, ground station locations must be within 1.6 kilometers (1 mile) of * * *

* * * * *

(a) Air-ground licensees may use any of the channels to provide service from any location to airborne mobile stations on the ground, provided that no interference is caused to service provided by ground stations operating in accordance with the geographical channel block layout or with paragraph (b) of this section, and provided that the locations of ground stations providing such service are at least 483 kilometers (300 miles) from all locations using the channel block(s) for communication with 800 MHz airborne mobile stations in flight.

(b) A ground station location may be more than 1.6 kilometers (1 mile) from all of the locations listed in this section provided that it is at least 885 kilometers (550 miles) from all existing locations using the same channel block for communication with 800 MHz airborne mobile stations in flight.

PART 23--INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

1. The authority citation for Part 23 continues to read as follows:

AUTHORITY: Section 47 U.S.C. 154, 303; Interpret or apply Section 47 U.S.C. 301.

2. Section 23.20 is amended by revising paragraphs (d) and (d)(1)(i)-(iv) to read as follows:

Section 23.20 Assignment of frequencies.

* * * * *

(d) * * * To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 728 hectare site (in the vicinity of coordinates 40°07'50" N. Latitude, 105°14'40" W. Longitude, resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values:

Frequency range	Field strength (mV/m) in authorized bandwidth of service	Power flux density[1] (dBW/m)[2] in authorized bandwidth of service
Below 540 kHz	10	65.8
540 to 1600 kHz	20	59.8
1.6 to 470 MHz	10	[2] 65.8
470 to 890 MHz	30	[2] 56.2
Above 890 MHz	1	[2] 85.8

[1] Equivalent values of power flux density are calculated assuming a free space characteristic impedance of 376.7 = 120 Pi ohms.

[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

(1) * * *

(i) All stations within 2.4 kilometers;

(ii) Stations within 4.8 kilometers with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 16.1 kilometers with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 80.5 kilometers with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

* * * * *

3. Section 23.40 is revised to read as follows:

Section 23.40 Changes in height or location of antenna.

The licensee of a fixed public radio station, the transmitter of which is authorized at a fixed location, shall not make any changes, without the express authority of the Commission, either in the height or the location of the antenna or its supporting structures, except when the existing or proposed antenna or structure has a maximum height not in excess of

30.5 meters above the ground, changes in height or local changes in location may be made without specific authorization. In no case shall any change in the height or location of the antenna or its supporting structures be made without authority when located or proposed to be located within 8 kilometers of an airport recognized by the Federal Aviation Agency or within 8 kilometers of the center line of an established Federal airway.

PART 25--SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

AUTHORITY: Sections 101-404, 76 Stat. 419-427; 47 U.S.C. 701-744, Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154 Interprets or applies Sec. 303, 48 Stat. 1082, as amended, 47 U.S.C. 303

2. Section 25.203 is amended to read as follows:

Section 25.203 Choice of sites and frequencies.

* * * * *

(f) * * *

(2) * * *

(i) All stations within 2.5 kilometers;

(ii) Stations within 5 kilometers with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 15 kilometers with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 80 kilometers with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

* * * * *

(h) * * *

(3) * * *

(i) All stations within 2.5 kilometers;

(ii) Stations within 5 kilometers with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Monitoring Station;

(iii) Stations within 15 kilometers with 1 kW or more average ERP in the

primary plane of polarization in the azimuthal direction of the Monitoring Station;

(iv) Stations within 80 kilometers with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

* * * * *

PART 36--JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 36 continues to read as follows:

AUTHORITY: Sections 151, 154(i), 154(j), 205, 221(c), 403 and 410.

2. Paragraphs (a) and (b) of Section 36.2 are amended to read as follows:

Section 36.2 Fundamental principles underlying procedures.

(a) * * *

(3) In the development of "actual use" measurements, measurements of use are (i) determined for telecommunications plant or for work performed by operating forces on a unit basis (e.g., conversation-minute-kilometers per message, weighted standard work seconds per call) in studies of traffic handled or work performed during a representative period for all traffic and (ii) applied to overall traffic volumes, i.e., 24-hour rather than busy-hour volumes.

(b) * * *

(3) * * *

(iii) Conversation-minute-kilometers or conversation minutes is the basis for measuring the use of interexchange circuit plant and holding-time minutes is the basis for measuring the use of exchange trunk plant. While the use of holding-time-minute-kilometers is the basic fundamental allocation factor for interexchange circuit plant and exchange trunk plant, the use of conversation-minute-kilometers or conversation-minutes for the allocation of interexchange circuit plant and holding-time minutes for the allocation of exchange trunk plant are considered practical approximations for separations between state and interstate operations when related to the broad types of plant classifications used herein.

* * * * *

3. Paragraphs (a) and (b) of Section 36.153 are amended to read as follows:

Section 36.153 Assignment of Cable and Wire Facilities (C&WF) to categories.

(a) * * *

(1) * * *

(i) * * *

(A) By section of cable, uniform as to makeup and relative use by categories. From an analysis of cable engineering and assignment records, determine in terms of equivalent gauge the number of pairs in use or reserved, for each category. The corresponding percentages of use, or reservation, are applied to the cost of the section of cable, i.e., sheath meters times unit cost per meter, to obtain the cost assignable to each category.

(B) By using equivalent pair kilometers, i.e., pair kilometers expressed in terms of equivalent gauge. From an analysis of cable engineering and assignment records, determine the equivalent pair kilometers in use for each category by type of facility, e.g., quadded, paired. The equivalent pair kilometers are then divided by a cable fill factor to obtain the equivalent pair kilometers in plant. The total equivalent pair kilometers in plant assigned to each category is summarized by type of facility, e.g., quadded and paired, and priced at appropriate average unit costs per equivalent pair kilometer in plant. If desired, this study may be made in terms of circuit kilometers rather than physical pair kilometers, with average cost and fill data consistent with the basis of the facilities kilometer count.

(ii) * * *

(C) For use in the assignment of poles to categories, the equivalent sheath kilometers of aerial cable assigned to each category are determined. For convenience, these quantities are determined in connection with assignment of cable costs.

* * * * *

(2) * * *

(i) * * *

(B) By pricing out each category by determining the pair meters of loaded pairs assigned to each category and multiplying by the unit cost per pair meter of loading by type.

* * * * *

(b) * * *

(1) The cost of wire accounted for as exchange is assigned to the appropriate Exchange Cable & Wire Facilities categories. The cost of wire accounted for as toll, which is used for exchange, is also assigned to the

appropriate Exchange Cable & Wire Facilities categories. The cost of the remaining wire accounted for as toll is assigned to the appropriate Interexchange Cable & Wire Facilities categories as described in Section 36.156. For companies not maintaining exchange and toll subaccounts, it is necessary to review the plant records and identify wire plant by use. The cost of wire used for providing circuits directly assignable to a category is assigned to that category. The cost of wire used for providing circuit facilities jointly used for exchange and interexchange lines is assigned to categories on the basis of the relative number of circuit kilometers involved.

* * * * *

4. Section 36.156 is amended to read as follows:

Section 36.156 Interexchange Cable and Wire Facilities (C&WF)--Category 3--apportionment procedures.

(a) An average interexchange cable and wire facilities cost per equivalent interexchange telephone circuit kilometer for all circuits in Category 3 is determined and applied to the equivalent interexchange telephone circuit kilometer counts of each of the classes of circuits.

(b) The cost of C&WF applicable to this category shall be directly assigned where feasible. If direct assignment is not feasible, cost shall be apportioned between the state and interstate jurisdiction on the basis of conversation-minute kilometers as applied to toll message circuits, TWX circuits, etc.

5. Paragraph (a) of Section 36.157 is amended to read as follows:

Section 36.157 Host/remote message Cable and Wire Facilities (C&WF)--Category 4--apportionment procedures.

(a) * * *

(1) The cost of host/remote message C&WF excluding WATS closed end access lines for the study area is apportioned on the basis of the relative number of study area minutes-of-use kilometers applicable to such facilities.

* * * * *

6. In the Appendix-Glossary section certain titles of definitions and/or the definitions are amended to read as follows:

* * * * *

Cable Fill Factor

The ratio of cable conductor or cable pair kilometers in use to total cable conductor or cable pair kilometers available in the plant, e.g., the ratio of revenue producing cable pair kilometers in use to total cable pair kilometers in plant.

* * * * *

Circuit Kilometers

The route kilometers or revenue producing circuits in service, determined by measuring the length in terms of kilometers, of the actual path followed by the transmission medium.

* * * * *

Conversation-Minute-Kilometers

The product of (a) the number of messages, (b) the average minutes of conversation per message and (c) the average route kilometers of circuits involved.

* * * * *

Equivalent Kilometers of 104 Wire

* * * * *

Equivalent Pair Kilometers

The product of sheath kilometers and the number of equivalent gauge pairs of conductors in a cable.

Equivalent Sheath Kilometers

The product of (a) the length of a section of cable in kilometers (sheath kilometers) and (b) the ratio of the metallic content applicable to a particular group of conductors in the cable (e.g., conductors assigned to a category) to the metallic content of all conductors in the cable.

* * * * *

The definition of "Long Haul Toll Traffic" is deleted.

* * * * *

Minutes-of-Use-Kilometers

The product of (a) the number of minutes-of-use and (b) the average route kilometers of circuits involved.

* * * * *

Sheath Kilometers

The actual length of cable in route kilometers.

The definition of "Short Haul Toll Traffic" is deleted.

* * * * *

TWX Connection-Minute-Kilometers

The product of (a) the number of TWX connections, (b) the average minutes per TWX connection and (c) the average route kilometers of circuits involved.

* * * * *

PART 61--TARIFFS

1. The authority citation for Part 61 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply Sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.33 is amended to read as follows:

Section 61.33 Letters of transmittal.

(a) Except as specified in Section 61.32(b), all publications filed with the Commission must be accompanied by a letter of transmittal of size A4 (21 cm x 29.7 cm) or 8.5 x 11 inches (21.6 cm x 27.9 cm). * * *

* * * * *

3. Section 61.52 is amended to read as follows:

Section 61.52 Form, size, type, legibility, etc.

(a) All tariff publications must be in loose-leaf form of size A4 (21 cm x 29.7 cm) or 8.5 x 11 inches (21.6 cm x 27.9 cm), and must be plainly printed in black print on white paper of durable quality. Less than 6-point type may not be used. Erasures or alterations in writing must not be made in any tariff publication filed with the Commission or in those copies posted for public convenience. A margin of no less than 2.5 cm (1 inch) in width must be allowed at the left edge of every tariff publication.

* * * * *

PART 63--EXTENSION OF LINES AND DISCONTINUANCE OF SERVICE BY CARRIERS AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for Part 63 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1075, as amended; 47 U.S.C. 214.

2. Section 63.01 is amended to read as follows:

Section 63.01 Contents of applications.

* * * * *

(j) * * *

(4) Cities, towns, and villages along routes indicated on map or sketch, with approximate population of each, and route kilometers between the principal points;

* * * * *

3. Section 63.03 is amended to read as follows:

Section 63.03 Special provisions relating to small projects for supplementing of facilities.

* * * * *

(b) * * *

(6) The route kilometers of the facilities involved (excluding leased facilities) and airline kilometers between terminal communities in the proposed project; and

* * * * *

(e) * * *

(2) The route kilometers thereof (excluding leased facilities);

(3) The terminal communities served and airline kilometers between such communities;

* * * * *

4. Section 63.04 is amended to read as follows:

Section 63.04 Special provisions relating to temporary or emergency service.

* * * * *

(b) * * * the route kilometers thereof, the terminal communities to be served, and airline kilometers between such communities; * * *

(c) * * *

(2) The route kilometers thereof (excluding leased facilities);

(3) The terminal communities served and the airline kilometers between terminal communities in the proposed project;

* * * * *

5. Section 63.53 is amended to read as follows:

Section 63.53 Form.

Applications under section 214 of the Communications Act shall be submitted on paper not more than 21.6 cm (8.5 in) wide and not more than 35.6 cm (14 in) long with a left-hand margin of 4 cm (1.5 in). * * *

6. Section 63.56 is amended to read as follows:

Section 63.56 Waivers.

* * * * *

(b) * * *

(2) A demonstration that the proposed service area has a density of less than thirty households per route kilometer of coaxial cable trunk and feeder line;

* * * * *

(c) * * * if the proposed service area has a density of thirty or more households per route kilometer of coaxial cable trunk and feeder line.

(d) * * *

(1) The density of the area to be served is thirty or more households per route kilometer; or

* * * * *

7. Section 63.64 is amended to read as follows:

Section 63.64 Alternative procedure in certain specified cases involving public coast stations.

(a) * * *

(1) Where applicant proposes to close a branch, agency, or jointly-operated office located within 0.4 kilometers of another office of the applicant with the same or longer hours of service and equal or better pickup and delivery facilities which will be made available to the area served by the office to be closed, and the average number of messages sent and received at the office to be closed, for the preceding 6 months, has been 50 or less per day;

* * * * *

8. Section 63.70 is amended to read as follows:

Section 63.70 Alternative procedure in certain specified cases where authority to reduce the hours of service at a public coast station is desired.

(a) * * *

(4) Applicant will post a public notice at least A2 (42.0 cm x 59.4 cm) or 20 in x 24 in (50.8 cm x 61.0 cm) in size, with letters of * * *

* * * * *

9. Section 63.90 is amended to read as follows:

Section 63.90 Publication and posting of notices.

(a) * * * the applicant shall post a public notice at least A2 (42.0 cm x 59.4 cm) or 20 in x 24 in (50.8 cm x 61.0 cm) in size, with letters of * * *

* * * * *

(b) * * * the applicant shall also cause to be published a notice of not less than 10 column centimeters (4 column inches) in size * * *

(c) * * * applicant shall post a public notice at least A3 (29.7 cm x 42.0 cm) or 11 in x 17 in (27.9 cm x 43.2 cm) in size as provided * * *

* * * * *

10. Section 63.500 is amended to read as follows:

Section 63.500 Contents of applications to dismantle or remove a trunk line.

* * * * *

(k) * * *

(3) Cities and towns along routes with approximate population of each, and route kilometers between the principal points;

* * * * *

PART 68--CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for Part 68 continues to read as follows:

AUTHORITY: Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303), unless otherwise noted.

2. Section 68.3 is amended to read as follows:

Section 68.3 Definitions.

* * * * *

(a) Single unit installations. * * * the demarcation point shall be a point within 30 cm (12 in) of the protector or, where there is no protector, within 30 cm (12 in) of * * *

(b) Multiunit installations. * * *

(2) * * * inside the customer's premises than a point 30 cm (12 in) from where the wiring enters the customer's premises.

* * * * *

System premises wiring: * * *

(a) * * *

(1) No greater than 15 meters (50 feet) in length * * *

* * * * *

3. Section 68.200 is amended to read as follows:

Section 68.200 Application for equipment registration.

* * * * *

(f) Photographs of size A4 (21.0 x 29.7 cm) or 8 x 10 inches (20.3 cm x 25.4 cm) of the equipment of sufficient clarity to reveal equipment construction and layout and labels for controls, with sufficient views of the internal construction to define component placement and chassis assembly. Photographs smaller than A4 (21.0 x 29.7 cm) or 8 x 10 inches (20.3 cm x 25.4 cm) will be acceptable if mounted on A4 (21.0 x 29.7 cm) or 8 x 10 inch (20.3 cm x 25.4 cm) paper and of sufficient clarity for * * *

* * * * *

(h) * * *

(1) An extension cord must consist of a male connector and a female connector and wiring between them which is no longer than 7.6 meters (25 feet).

(2) * * * Switch wiring must be "fully protected" wiring, no longer than 7.6 meters (25 feet).

* * * * *

4. Section 68.212 is amended to read as follows:

Section 68.212 Assignment of equipment registration.

* * * * *

(c) * * * This rating shall be established by covering the jacket or sheath with at least 15 cm (6 in) * * *

* * * * *

5. Section 68.213 is amended to read as follows:

Section 68.213 Installation of other than "fully protected" non-system simple customer premises wiring.

* * * * *

(c) * * * This rating shall be established by covering the jacket or sheath with at least 15 cm (6 in) * * *

* * * * *

6. Section 68.215 is amended to read as follows:

Section 68.215 Installation of other than "fully protected" system premises wiring.

(a) * * *

(2) * * * to locate the interface within 7.6 meters (25 feet) of * * *

* * * * *

(d) * * *

(2) * * * This rating shall be established by covering the jacket or sheath with at least 15 cm (6 in) * * *

* * * * *

7. Section 68.302 is amended to read as follows:

Section 68.302 Environment simulation.

* * * * *

(b) Temperature and humidity. Cycling at any convenient rate through the following temperature and humidity conditions three times: 30 minutes at 65° C (150° F) and 15 percent relative humidity, followed by 30 minutes at 32° C (90° F) and 90 percent relative humidity, followed by 30 minutes at -40° C (-40° F) and any convenient humidity.

(c) Shock.

(1) Registered Terminal Equipment and Registered Protective Circuitry Equipment Unpackaged:

Hand-Held Items Normally Used at Head Height:

18 random drops from a height of 150 cm (60 in) onto concrete covered with 3 mm (1/8 in) asphalt tile or similar surface.

Normally Customer Carried Equipment:

6 random drops from a height of 75 cm (30 in) onto concrete covered with 3 mm (1/8 in) asphalt tile or similar surface.

Equipment Not Normally Customer Carried:

These tests are made onto concrete covered with 3 mm (1/8 in) asphalt tile or similar surface.

0-10 kg (0-20 lbs): One 15 cm (6 in) face drop on each normal or designated rest face, one 7 cm (3 in) drop on all other faces, and one 7 cm (3 in) corner drop on each corner.

10-20 kg (20-50 lbs): One 10 cm (4 in) face drop on each normal or designated rest face, one 5 cm (2 in) face drop on all other faces, and one 5 cm (2 in) corner drop on each corner.

20-50 kg (50-100 lbs): One 5 cm (2 in) face drop on each normal or designated rest face. One edgewise drop and one cornerwise drop from a height of 5 cm (2 in) on each edge and corner adjacent to the rest face.

50-500 kg (100-1000 lbs): One 2 cm (1 in) face drop on each normal or designated rest face. One edgewise drop and one cornerwise drop from a height of 2 cm (1 in) on each edge and corner adjacent to the rest face.

Over 500 kg (1,000 lbs): One 2 cm (1 in) face drop on each normal or designated rest face. One edgewise drop from a height of 2 cm (1 in) on each edge adjacent to this rest face.

* * * * *

8. Section 68.304 is amended to read as follows:

Section 68.304 Leakage current limitations.

* * * * *

Note (5): * * * The leakage current limitation may be increased to (10N + 0.04L) milliamperes peak where L is the length of interconnecting cable in the leakage path in meters and * * *

* * * * *

9. Section 68.500 is amended to read as follows:

Section 68.500 Specifications.

General. The US customary units are shown in parentheses throughout this Subpart F. US customary units were the original dimensional units used in designing the plugs and jacks shown in the following pages. The dimensions shown without parenthesis are in SI units.

The SI dimensional units are derived from the US customary units by multiplying "inches" by "25.4" to derive the exact conversion in millimeters with no rounding-off of the resulting decimal value. The number of decimal places to which the conversion is taken by adding a particular number of zeroes

to the right end of the resulting SI value, where required, is governed by the concept that when the calculated SI dimensional unit is divided by "25.4," the resulting "inches" calculation will be exactly that shown in the parenthesis (the original design dimension).

The conversion to SI force units, newtons, is rounded off to a number of decimal places that will result in the calculated SI force value being within less that one percent of the original US customary force unit value located adjacent in parenthesis (the original design value). The rationale for this is that this will bring the force conversions to within the degree of accuracy of the force-measuring device and avoid the carrying of an unrealistic number of decimal places which would otherwise result from an exact conversion.

The plugs and jacks described in this section represent the standard connections to be used for connections to the telephone network. The plug and jack designs shown are representative of generic types, and should not be interpreted as the only designs that may be used. Design innovation and improvement is expected; but for interchangeability to be maintained, alternative designs (the "or equivalent" permitted in Section 68.104) must be compatible with the plugs and jacks shown. The interface dimensions between mating plugs and jacks must be maintained. Hardware used to mount, protect, and enclose standard jacks is not described. The only requirement on connecting blocks, housings, dust covers, outdoor boxes, and the like that contain standard network jacks is that they accept standard plugs with cordage. For special purpose applications, plugs may be made longer than shown or adapted for direct use on equipment or apparatus without cordage. The sliding modular plug used on the back of many modular wall telephone sets is an example of such a special purpose application. It is the responsibility of the designers and manufacturers of communication equipment who use such plugs to assure that they are compatible with the hardware used to mount standard jacks with which they plan to interface.

(a) Miniature 6-position plug:

* * * * *

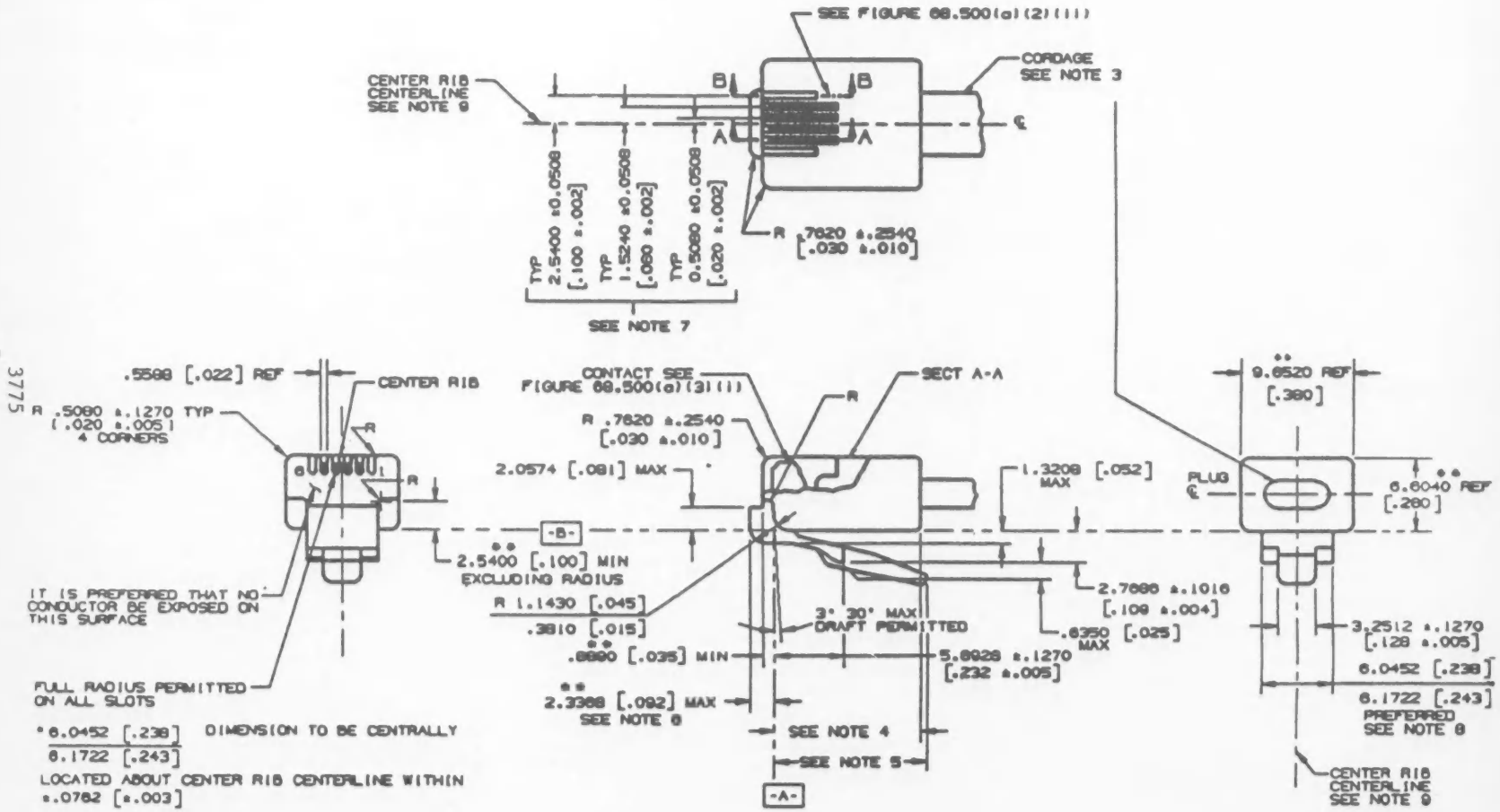
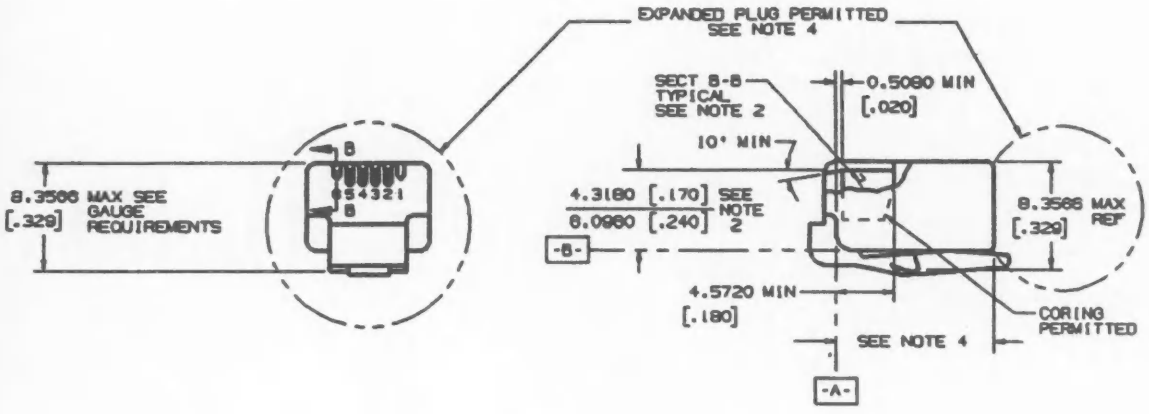

SEE FIGURE 68.500(a)(2)(i)
CENTER RIB CENTERLINE SEE NOTE 9
CORDAGE SEE NOTE 3
B
A
R .7620 ±.2540 [.030 ±.010]
TYP 2.5400 ±0.0508 [.100 ±.002]
TYP 1.5240 ±0.0508 [.060 ±.002]
TYP 0.5080 ±0.0508 [.020 ±.002]
SEE NOTE 7
3775
.5588 [.022] REF
CENTER RIB
R .5080 ±.1270 TYP [.020 ±.005] 4 CORNERS
IT IS PREFERRED THAT NO CONDUCTOR BE EXPOSED ON THIS SURFACE
FULL RADIUS PERMITTED ON ALL SLOTS
*6.0452 [.238] / 6.1722 [.243] DIMENSION TO BE CENTRALLY LOCATED ABOUT CENTER RIB CENTERLINE WITHIN ±.0762 [±.003]
** SEE GAUGE REQUIREMENTS FIGURES 68.500(a)(4)(i) & 68.500(a)(5)(i)
NOTE: ALL NOTES FOLLOW FIGURE 68.500 (a)(2)(i).
CONTACT SEE FIGURE 68.500(a)(3)(i)
SECT A-A
R .7620 ±.2540 [.030 ±.010]
2.0574 [.081] MAX
-B-
2.5400 [.100] MIN EXCLUDING RADIUS
R 1.1430 [.045]
.3810 [.015]
.0890 [.035] MIN
2.3368 [.092] MAX SEE NOTE 8
3° 30° MAX DRAFT PERMITTED
SEE NOTE 4
SEE NOTE 5
-A-
1.3208 [.052] MAX
.6350 [.025] MAX
2.7686 ±.1016 [.109 ±.004]
5.8928 ±.1270 [.232 ±.005]
PLUG
9.6520 REF [.380]
6.6040 REF [.260]
3.2512 ±.1270 [.128 ±.005]
6.0452 [.238]
6.1722 [.243] PREFERRED SEE NOTE 8
CENTER RIB CENTERLINE SEE NOTE 9

FIGURE 68.500(a)(2)(i)- 6 POSITION PLUG
MECHANICAL SPECIFICATION



NOTE: ALL NOTES FOLLOW THIS FIGURE.

FIGURE 68.500(a)(2)(ii) - 6 POSITION PLUG
MECHANICAL SPECIFICATION (CONTINUED)

NOTES: (Notes apply to Figures 68.500(a)(2)(i) and 68.500(a)(2)(ii))

* * * * *

3. The preferred major cordage cross section is 2.5400 mm (.100 inch) max. thick by 5.0800 mm (.200 inch) max. wide, with rounded corners. It should exit the plug on the plug centerline. Other cordage configurations are permitted but may inhibit the special features of some network jack enclosures.

4. The standard plug length is 11.6840 mm (.460 inch) max. Plugs may be made longer than standard or adapted for direct use on special cords, adapters with out cordage, and on apparatus or equipment subject to the limitations described in the Section 68.500 introductory paragraphs. Plugs longer than standard may inhibit the special features of some network jack enclosures.

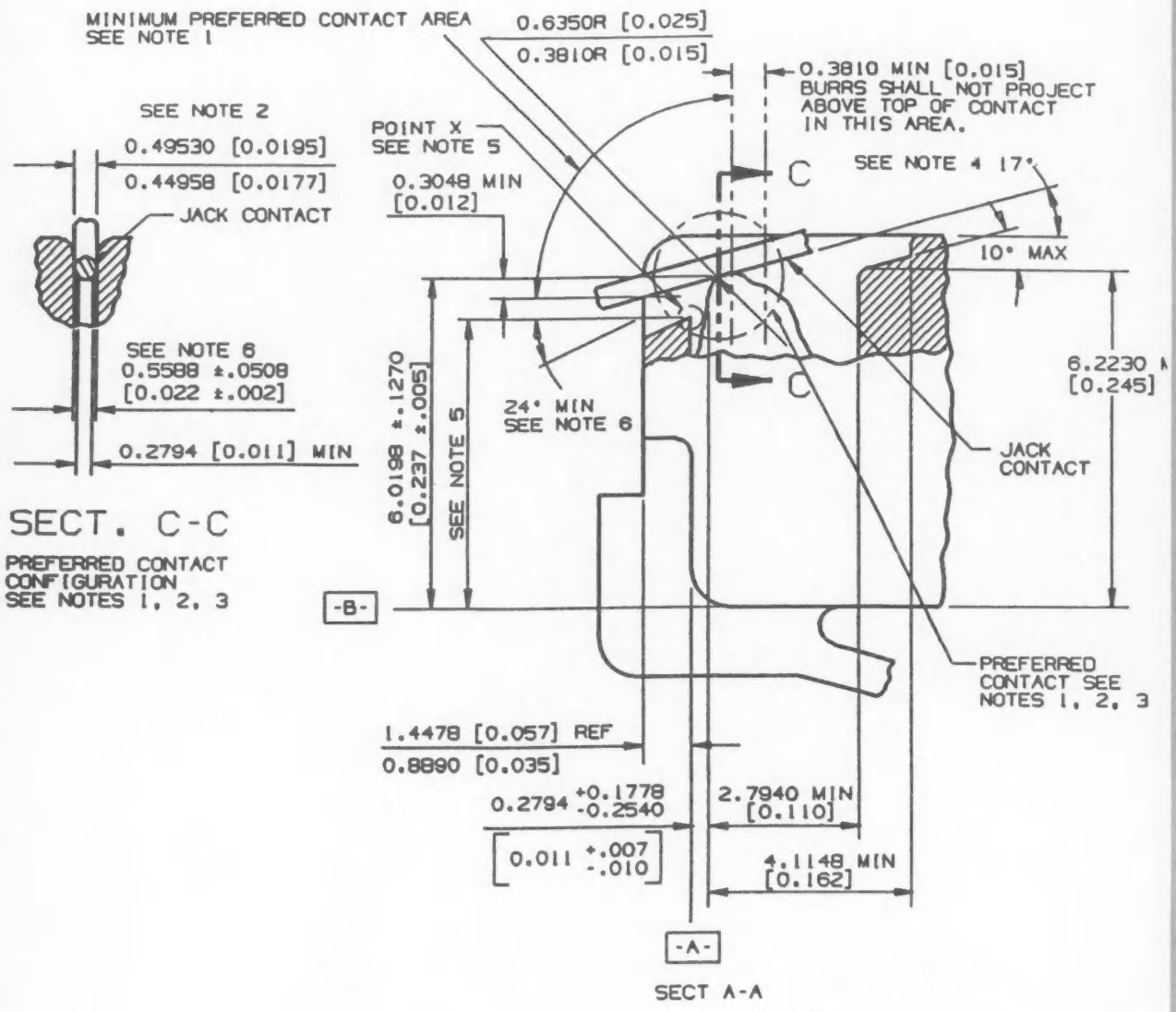
5. A 12.0396 mm (.474 inch) minimum tab length is required. It is preferred that a maximum tab length be no longer than 13.2080 mm (.520 inch). Longer tabs may be used with the same limitations as described in Note 4.

6. To obtain maximum plug guidance when 6-position plugs are inserted in 8-position jacks, it is desirable to extend the front plug nose to the 2.3368 mm (.092 inch) maximum.

* * * * *

8. The 6.0452/6.1722 mm (.238/.243 inch) dimension is preferred to obtain maximum plug guidance in jacks with more than 6 conductors. A tolerance range of 5.9182/6.1722 mm (.233/.243 inch) is permitted, but may create targeting problems in 8-position jacks.

9. The center rib centerline shall be coincident with the plug width 9.6520 mm (.380 inch) ref. centerline within +/- .0762 mm (+/- .003 inch).



NOTE: ALL NOTES FOLLOW THIS FIGURE.

NOTE: THE 8 POSITION PLUG/JACK CONTACT SPECIFICATION IS IDENTICAL.

FIGURE 68.500(a)(3)(i)- 6 POSITION PLUG

PLUG /JACK CONTACT SPECIFICATION

NOTES: (Notes apply to Figure 68.500(a)(3)(i))

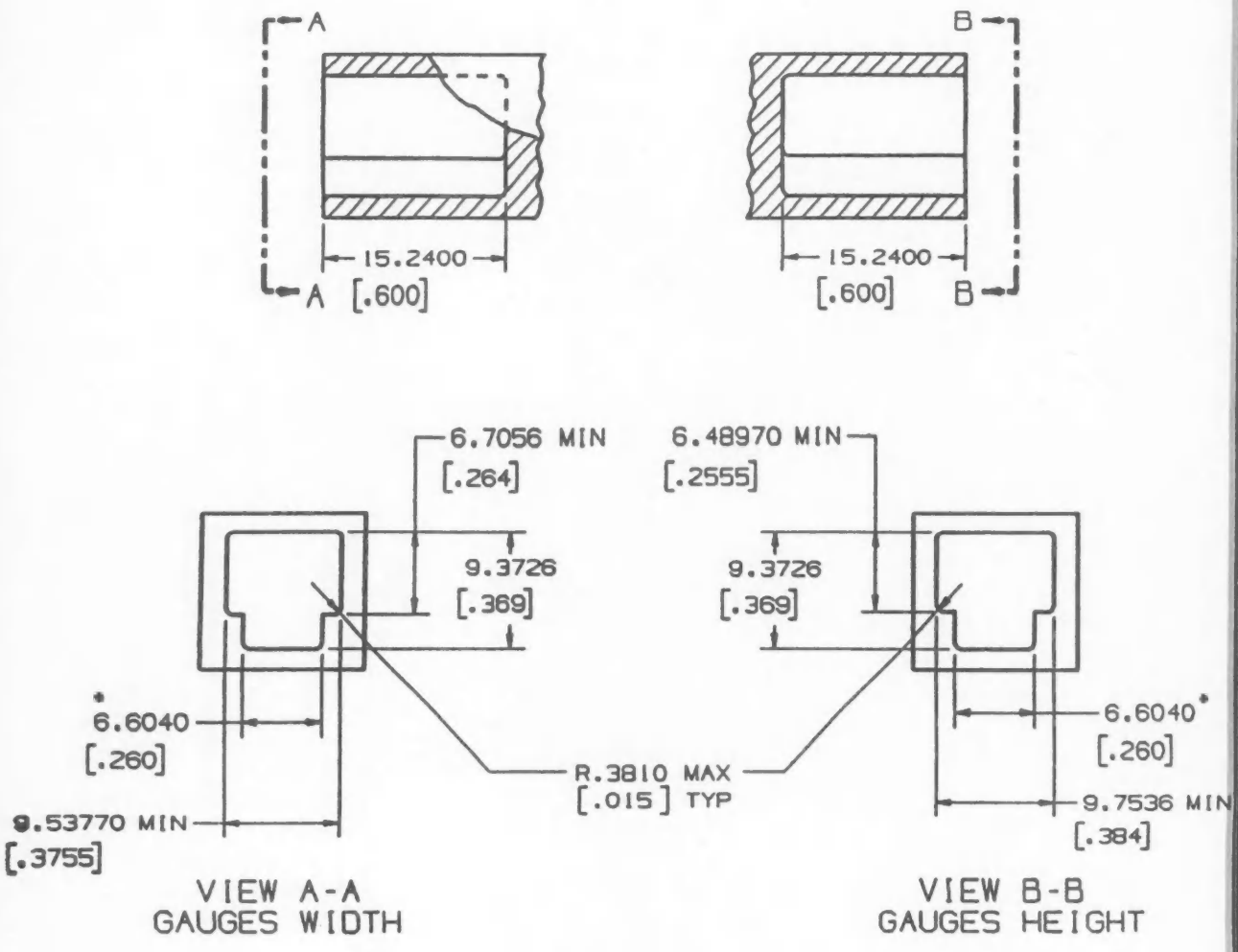
1. The plug/jack contact interface should be hard gold to hard gold and should have a minimum gold thickness of .0012700 mm (0.000050 inch) on each side of the interface. The minimum contact force should be .98 N (100 grams). Any non-gold contact material must be compatible with gold and provide equivalent contact performance. A smooth, burr-free surface is required at the interface in the area shown.

2. The jack contact design is based upon .4572 mm (.018 inch) spring temper phosphor bronze round wire in the modular plug blade and jack contact interface. Other contact configurations that provide contact performance equal to or better than the preferred configurations and do not cause damage to the plug or jack are permitted. The preferred jack contact width is .44958/.49530 mm (.0177/.0195 inches). Deviations from the preferred jack contact width are permitted for round contacts as well as noncircular cross sectional shapes but they must be compatible with existing plug configurations. The requirements of Note 1 apply to all possible contact areas.

* * * * *

5. To avoid loss of electrical contact, the preferred dimension from datum B to the highest point "X" should be 5.0800 mm (.200 inch) max. A dimension greater than 5.3594 mm (.211 inch) may result in loss of electrical contact between plugs and jacks. The 5.3594 mm (.211 inch) max. shall be considered an absolute maximum.

6. The 24 degree min. angle applies only to plugs with front plastic walls higher than 4.8260 mm (.190 inches).



NO-GO GAUGE

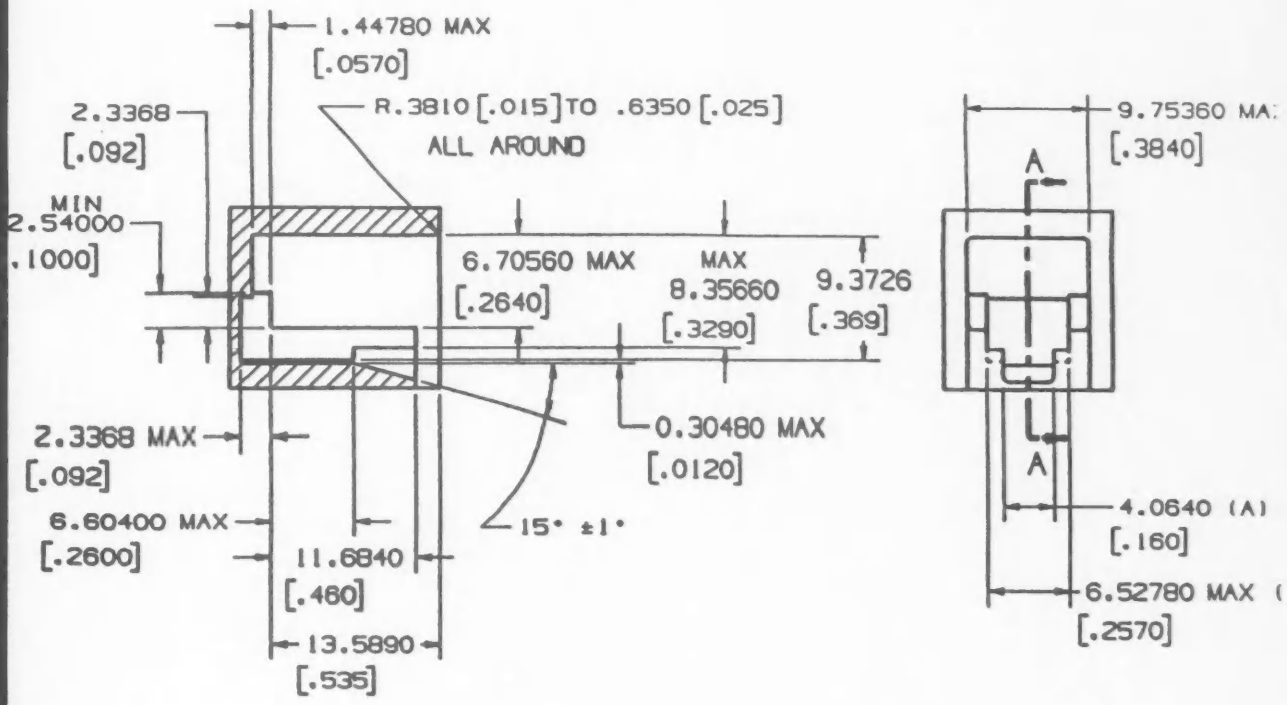
NOTES:

1. THE PLUG SHALL NOT BE CAPABLE OF ENTERING THE GAUGE MORE THAN 1.7780mm [.070] BEYOND DATUM-A- (SEE FIGURE 68.500(a)(2)(i)) WITH 8.90 newtons[2.0 POUNDS] INSERTION FORCE.

2. NON-TOLERANCED DIMENSIONS GIVEN TO FOUR PLACES SHALL BE WITHIN ±0.0508mm [.002].

3. *6.6040mm [.260] DIMENSION TO BE CENTRALLY LOCATED WITH RESPECT TO 9.7536mm [.384] MINIMUM AND 9.53770mm [.3755] MINIMUM WITHIN ±0.0508mm [.002].

FIGURE 68.500(a)(4)(i)- 6 POSITION PLUG
MINIMUM PLUG SIZE



SECT. A-A

GO GAUGE

NOTES

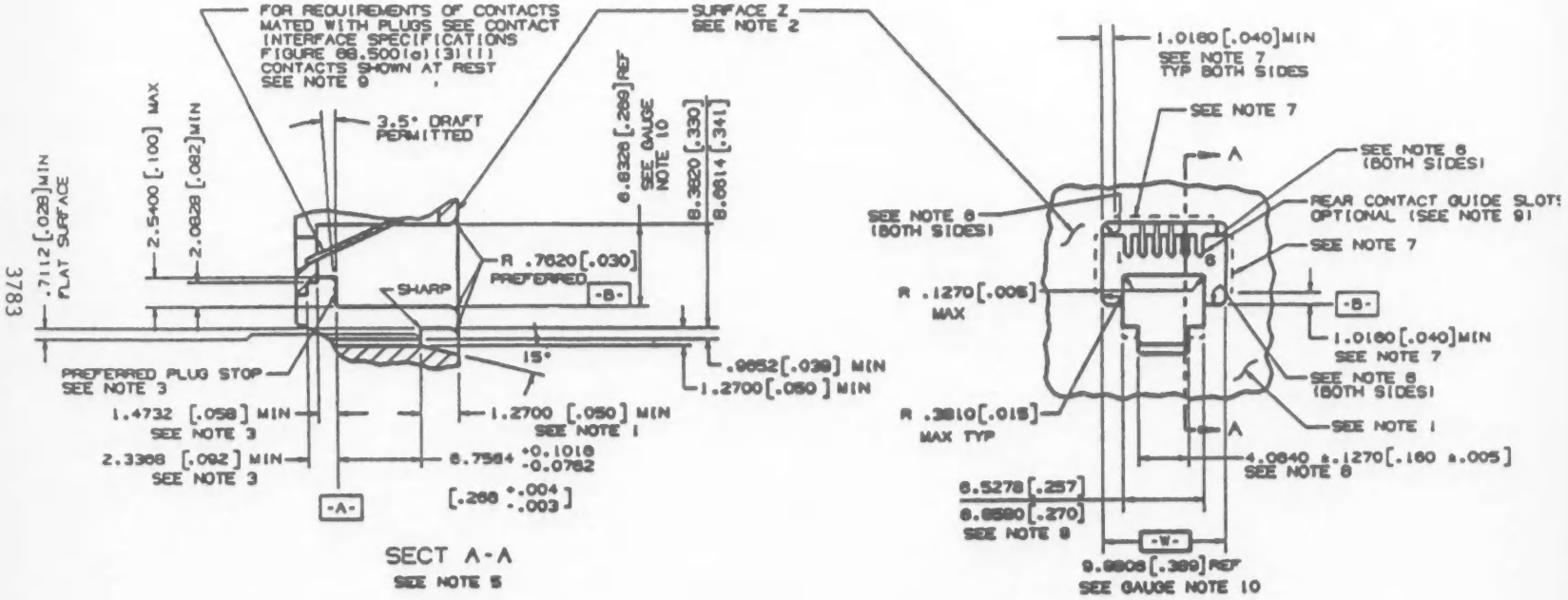
1. THE PLUG SHALL BE CAPABLE OF INSERTION AND LATCHING INTO THE GUAGE WITH 22.24 newtons [5 POUNDS] OR LESS INSERTIONS FORCE. PLUG LATCHING BAR SHALL BE DEPRESSED SO AS NOT TO INTERFERE WITH THE PLUG ENTRY. AFTER INSERTION AND LATCHING, PLUG SHALL BE CAPABLE OF REMOVAL, WITH THE LATCH DEPRESSED, WITH A REMOVAL FORCE OF 44.48 newtons [10 POUNDS] OR LESS APPLIED AT AN ADVANTAGEOUS ANGLE.
2. DIMENSIONS GIVEN TO FOUR DECIMAL PLACES SHALL BE WITHIN ±.0508mm [±.002] .
3. DIMENSIONS (A) AND (B) TO BE CENTRALLY LOCATED WITH RESPECT TO 9.75360mm [.3840] MAX. JACK OPENING WIDTH WITHIN ±0.0254mm [.001] .
4. DO NOT SCALE DRAWINGS FOR EXTERNAL CONFIGURATION.

FIGURE 68.500(a)(5)(i)- 6 POSITION PLUG
MAXIMUM PLUG SIZE

(b) * * *

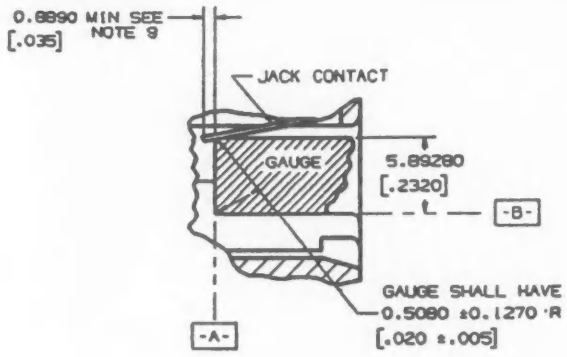
(1) [reserved]

(NOTE: THIS JACK IS DEPICTED EQUIPPED WITH 4 CONTACTS; IT MAY BE FABRICATED WITH ITS FULL 6 CONTACT CAPACITY.)



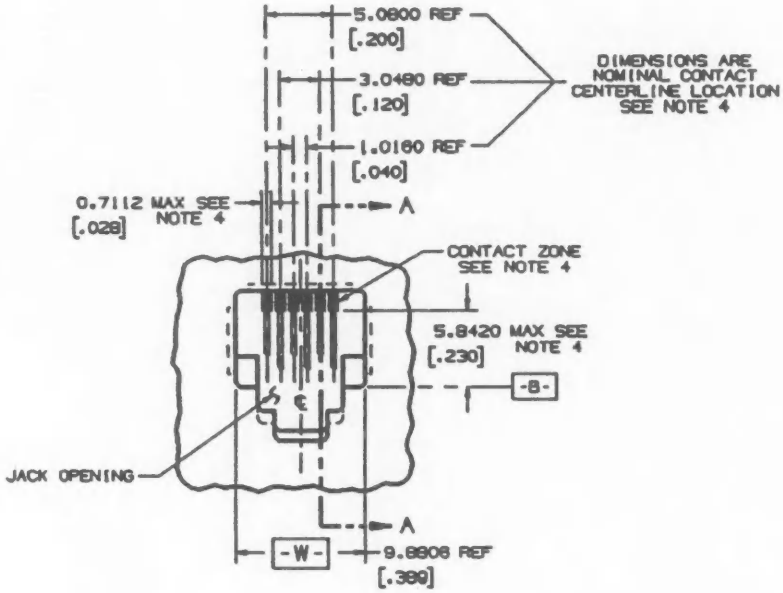
NOTE: ALL NOTES FOLLOW FIGURE 68.500(b)(3)(1) UNLESS SPECIFIED.

FIGURE 68.500(b)(2)(1) - 6 POSITION JACK MECHANICAL SPECIFICATION



SEC A-A

(SHOWN WITHOUT REAR CONTACT GUIDES)



VIEW OF CONTACT ZONE

(SHOWN WITHOUT REAR CONTACT GUIDES)

NOTE: ALL NOTES FOLLOW THIS FIGURE.

FIGURE 68.500(b)(3)(i)- 6 POSITION JACK
MECHANICAL SPECIFICATIONS (CONTINUED)

NOTES: (Notes apply to Figures 68.500(b)(2)(i) and 68.500(b)(3)(i))

1. Front surface projections beyond the 1.2700 mm (.050 inch) min. shall be configured so as not to prevent finger access to the plug release catch (Reference Figure 68.500(a)(2)(i), 6-Position Plug, Mechanical Specifications). A catch length greater than 1.2700 mm (.050 inch) is beneficial in providing greater breakout strength.

* * * * *

3. The preferred plug stop surface is indicated. If some other internal feature is used as a plug stop, it must be located so that the axial movement of a latched plug is no greater than 1.1430 mm (0.045 inch).

4. To prevent mistargeting between the plug and jack contacts, the jack contacts should be completely contained in their individual contact zones, .7112 mm (.028 inch) max. wide, where they extend into the jack openings. There is no location requirement for jack contacts below these zones 5.8420 mm (.230 inch) max., but adequate contact separation must be maintained to prevent electrical breakdown. These shaded contact zones should be centrally located, (included all locating tolerances), about the jack opening width 9.8806 mm (.389 inch) Ref, (Datum -W-). Contacts located outside of these zones may result in mistargeting between the jack and plug contacts.

5. All inside and outside corners in the plug cavity to be .3810 mm (.015 inch) radius max. unless specified.,

* * * * *

7. Relief inside the dotted areas on 3 sides of the jack opening is permitted. The 6.8326 mm (.269 inch) Ref and 9.8806 mm (.389 inch) Ref Gauge Requirements must be maintained in each corner, (ref. 1.0160 mm (0.040 inch) min), to assure proper plug/jack interface guidance. A .8128 mm +/- .1270 mm (.032 inch +/- .005 inch) relief on the top side, (opposite plug catch), is required on jacks in connecting blocks which mount and connect portable wall telephones so as to assure interface with the special purpose sliding modular plug used on many wall telephone sets.

8. 4.0640 mm (.160 inch) and 6.5278/6.8580 mm (.257/.270 inch) dimensions to be centrally located to jack opening width -W- within +/- .1778 mm (0.007 inch).

* * * * *

10. Gauge Requirements:

GO: The jack shall be capable of accepting a 9.7536 x 6.7056 mm (0.3840 x 0.2640 inch) gauge and the gauge shall be capable of being removed with a maximum force of 8.9 newtons (2 pounds).

NO GO: The jack shall not accept either a 10.00760 x 6.45160 mm (0.3940 x 0.254 inch) horizontal width of opening gauge or a 6.95960 x 9.5504 mm (.2740 x

.376 inch) vertical height of opening gauge. However, if either gauge is accepted the force necessary to remove the gauge shall be minimum .83 newtons (3.0 ounces).

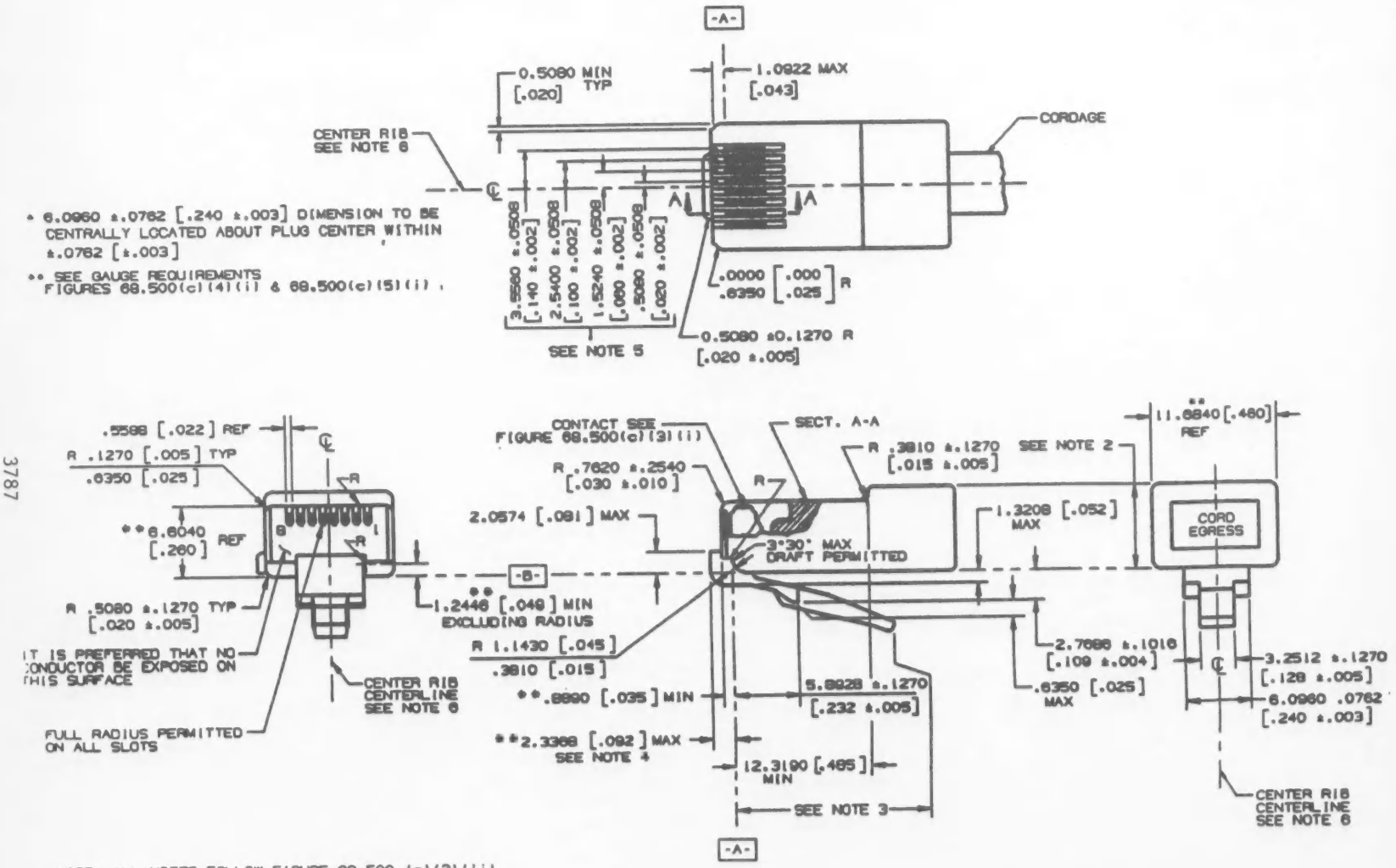
* * * * *

Gauges shall have a .7620 mm (.030 inch) radius on the nose and a .3810 mm (0.015 inch) radius on all edges with clearance provided for contacts.

(c) * * *

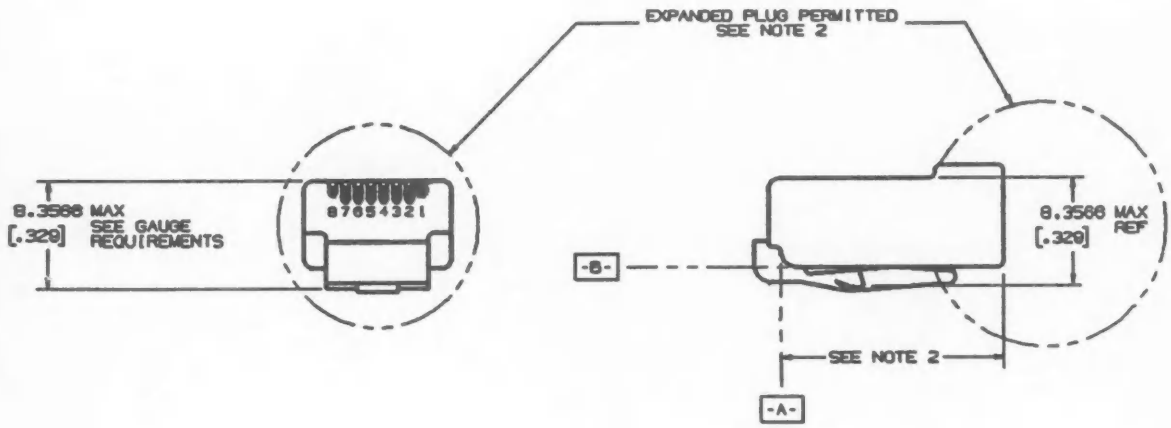
* * * * *

NOTE: THIS PLUG IS DEPICTED WITH ITS FULL 8 CONTACT CAPACITY.
IT MAY BE FABRICATED WITH LESS THAN 8 CONTACTS.


-A-
0.5080 MIN TYP [.020]
1.0922 MAX [.043]
CORDAGE
CENTER RIB SEE NOTE 6
* 6.0960 ±.0762 [.240 ±.003] DIMENSION TO BE CENTRALLY LOCATED ABOUT PLUG CENTER WITHIN ±.0762 [±.003]
** SEE GAUGE REQUIREMENTS FIGURES 68.500(c)(4)(i) & 68.500(c)(5)(i).
3.5560 ±.0508 [.140 ±.002]
2.5400 ±.0508 [.100 ±.002]
1.5240 ±.0508 [.060 ±.002]
.5080 ±.0508 [.020 ±.002]
SEE NOTE 5
.0000 .6350 [.000 .025] R
0.5080 ±0.1270 R [.020 ±.005]
.5588 [.022] REF
R .1270 [.005] TYP
.6350 [.025]
**8.6040 [.260] REF
R .5080 ±.1270 TYP [.020 ±.005]
IT IS PREFERRED THAT NO CONDUCTOR BE EXPOSED ON THIS SURFACE
FULL RADIUS PERMITTED ON ALL SLOTS
CENTER RIB CENTERLINE SEE NOTE 6
CONTACT SEE FIGURE 68.500(c)(3)(i)
SECT. A-A
R .7620 ±.2540 [.030 ±.010]
R .3810 ±.1270 [.015 ±.005] SEE NOTE 2
2.0574 [.081] MAX
3°30' MAX DRAFT PERMITTED
1.3208 [.052] MAX
**11.6840 [.460] REF
CORD EGRESS
-B-
**1.2446 [.049] MIN EXCLUDING RADIUS
R 1.1430 [.045]
.3810 [.015]
**.8890 [.035] MIN
**2.3368 [.092] MAX SEE NOTE 4
5.8928 ±.1270 [.232 ±.005]
12.3190 [.485] MIN
SEE NOTE 3
2.7686 ±.1016 [.109 ±.004]
.6350 [.025] MAX
3.2512 ±.1270 [.128 ±.005]
6.0960 .0762 [.240 ±.003]
CENTER RIB CENTERLINE SEE NOTE 6
-A-

NOTE: ALL NOTES FOLLOW FIGURE 68.500 (c)(2)(i).

FIGURE 68.500(c)(2)(i) - 8 POSITION UNKEYED
PLUG, MECHANICAL SPECIFICATION



NOTE: ALL NOTES FOLLOW THIS FIGURE.

FIGURE 68.500(c)(2)(ii) - 8 POSITION UNKEYED PLUG, MECHANICAL SPECIFICATION (CONTINUED)

NOTES: (Notes apply to Figures 68.500(c)(2)(i) and 68.500(c)(2)(ii))

* * * * *

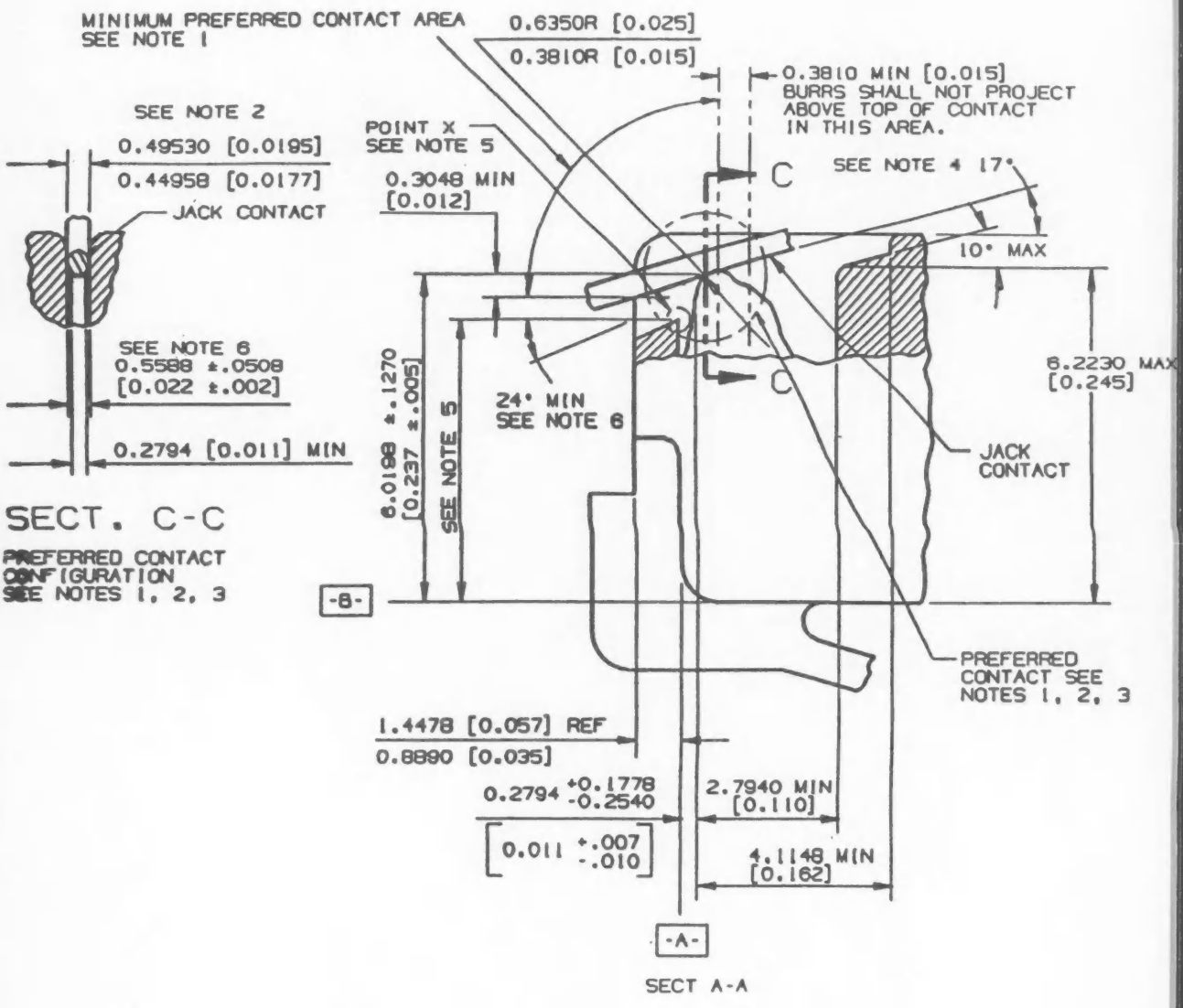
2. The standard plug height in the area shown is 8.0010 mm (.315 inch) maximum. The standard plug length is 23.1140 mm (.910 inch) maximum. Plugs may be made longer than standard or adapted for direct use on special cords, adapters without cordage, apparatus or equipment subject to the limitations described in the introductory paragraphs of 68.500. Plugs longer and/or higher than standard may inhibit the special features of some network jack enclosures.

3. A 14.6050 mm (.575 inch) minimum tab length is required. It is preferred that a maximum tab length be no longer than 15.8750 mm (.625 inch). Longer tabs may be used with the same limitations described in Note 2.

4. To obtain maximum plug guidance in jacks, it is desirable to extend the front plug nose to the 2.3368 mm (.092 inch) maximum.

* * * * *

6. The center rib centerline shall be coincident with the plug width 11.6840 mm ref. (.460 inch ref.) centerline within +/- .0762 mm (.003 inch).



NOTE: ALL NOTES FOLLOW THIS FIGURE.

NOTE: THE 6 POSITION PLUG/JACK CONTACT SPECIFICATION IS IDENTICAL.

FIGURE 68.500(c)(3)(i)- 8 POSITION UNKEYED PLUG

PLUG /JACK CONTACT SPECIFICATION

NOTES: (Notes apply to Figure 68.500(c)(3)(i))

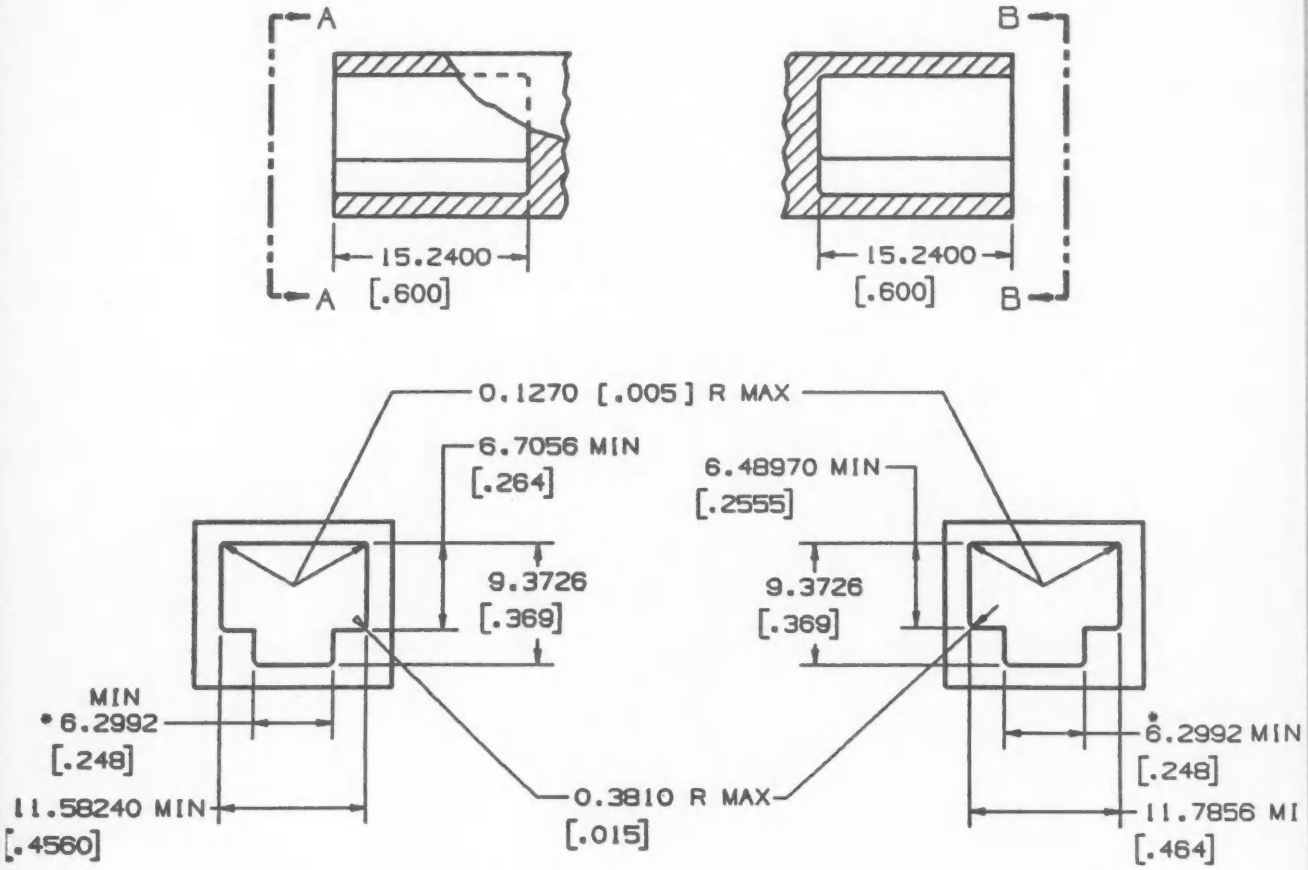
1. The plug/jack contact interface should be hard gold to hard gold and should have a minimum gold thickness of .0012700 mm (.000050 inch) on each side of the interface. The minimum contact force should be .98 N (100 grams). Any non-gold contact material must be compatible with gold and provide equivalent contact performance. A smooth, burr-free surface is required at the interface in the area shown.

2. The jack contact design is based upon .4572 mm (.018 inch) spring temper phosphor bronze round wire in the modular plug blade and jack contact interface. Other contact configurations that provide contact performance equal to or better than the preferred configurations and do not cause damage to the plug or jack are permitted. The preferred jack contact width is .44958/.49530 mm (.0177/.0195 inches). Deviations from the preferred jack contact width are permitted for round contacts as well as noncircular cross sectional shapes but they must be compatible with existing plug configurations. The requirements of Note 1 apply to all possible contact areas.

* * * * *

5. To avoid loss of electrical contact, the preferred dimension from datum B to the highest point "X" should be 5.0800 mm (.200 inch) max. A dimension greater than 5.3594 mm (.211 inch) may result in loss of electrical contact between plugs and jacks. The 5.3594 mm (.211 inch) max. shall be considered an absolute maximum.

6. The 24 degree min. angle applies only to plugs with front plastic walls higher than 4.8260 mm (.190 inches).



VIEW A-A
GAUGES WIDTH

VIEW B-B
GAUGES HEIGHT

NO-GO GAUGE

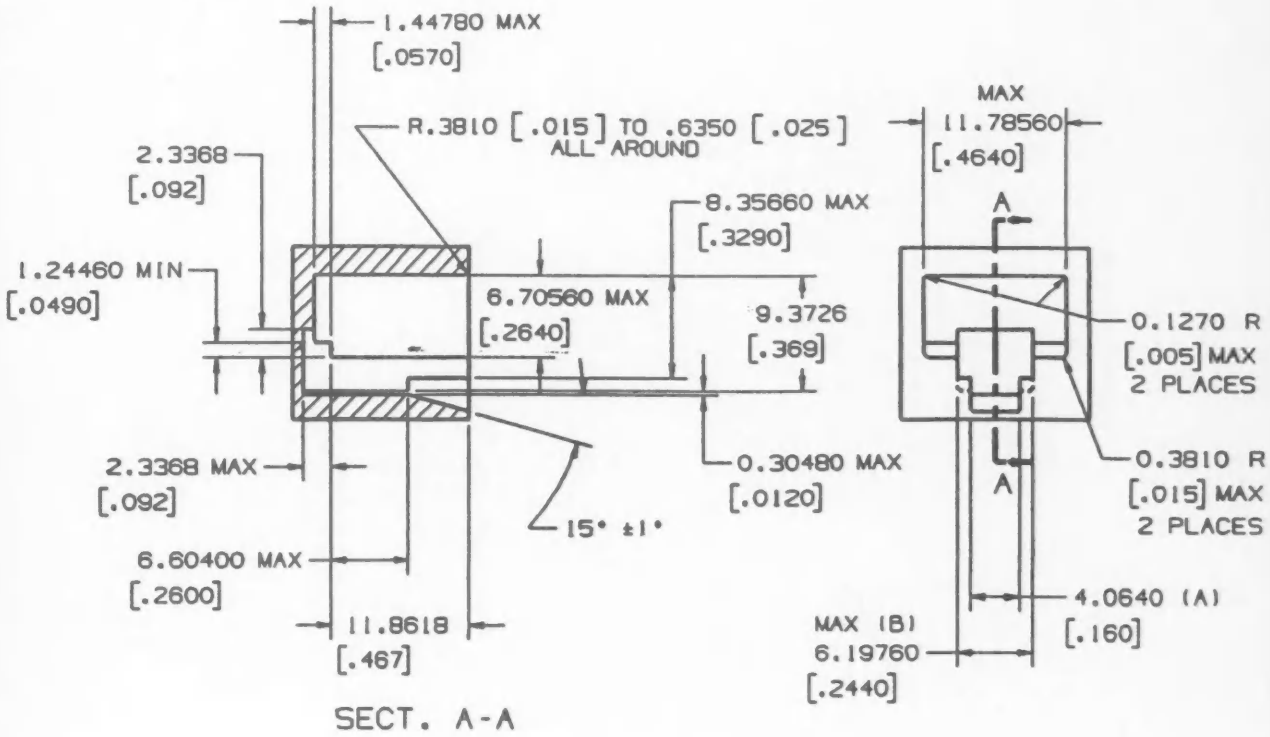
NOTES:

1. THE PLUG SHALL NOT BE CAPABLE OF ENTERING THE GAUGE MORE THAN 1.7780mm [.070] BEYOND DATUM-A-(SEE FIGURE 68.500(c)(2)(i)) WITH 8.90 neuton [2.0 POUNDS] INSERTION FORCE.

2. NON-TOLERANCED DIMENSIONS GIVEN TO FOUR PLACES SHALL BE WITHIN ±0.0508mm [.002] .

3. * 6.2992mm [.248] DIMENSION TO BE CENTRALLY LOCATED WITH RESPECT TO 11.7856mm [.464] MINIMUM AND 11.58240mm [.4560] MIMIMUM WITHIN ±0.0508mm [.002] .

FIGURE 68.500(c)(4)(i)-8 POSITION UNKEYED PLUG, MINIMUM PLUG SIZE



GO GAUGE

NOTES:

1. THE PLUG SHALL BE CAPABLE OF INSERTION AND LATCHING INTO THE GAUGE WITH 22.24 newtons [5 POUNDS] OR OR LESS INSERTION FORCE. PLUG LATCHING BAR SHALL BE DEPRESSED SO AS NOT TO INTERFERE WITH THE PLUG ENTRY. AFTER INSERTION AND LATCHING, PLUG SHALL BE CAPABLE OF REMOVAL, WITH THE LATCH DEPRESSED, WITH REMOVAL FORCE OF 44.48 newtons [10 POUNDS] OR LESS APPLIED AT AN ADVANTAGEOUS ANGLE.

2. DIMENSIONS GIVEN TO FOUR DECIMAL PLACES SHALL BE WITHIN ±.0508mm [.002].

3. DIMENSIONS (A) AND (B) TO BE CENTRALLY LOCATED WITH RESPECT TO 11.78560mm [.4640] MAX. JACK OPENING WIDTH WITHIN ±0.0254mm [.001].

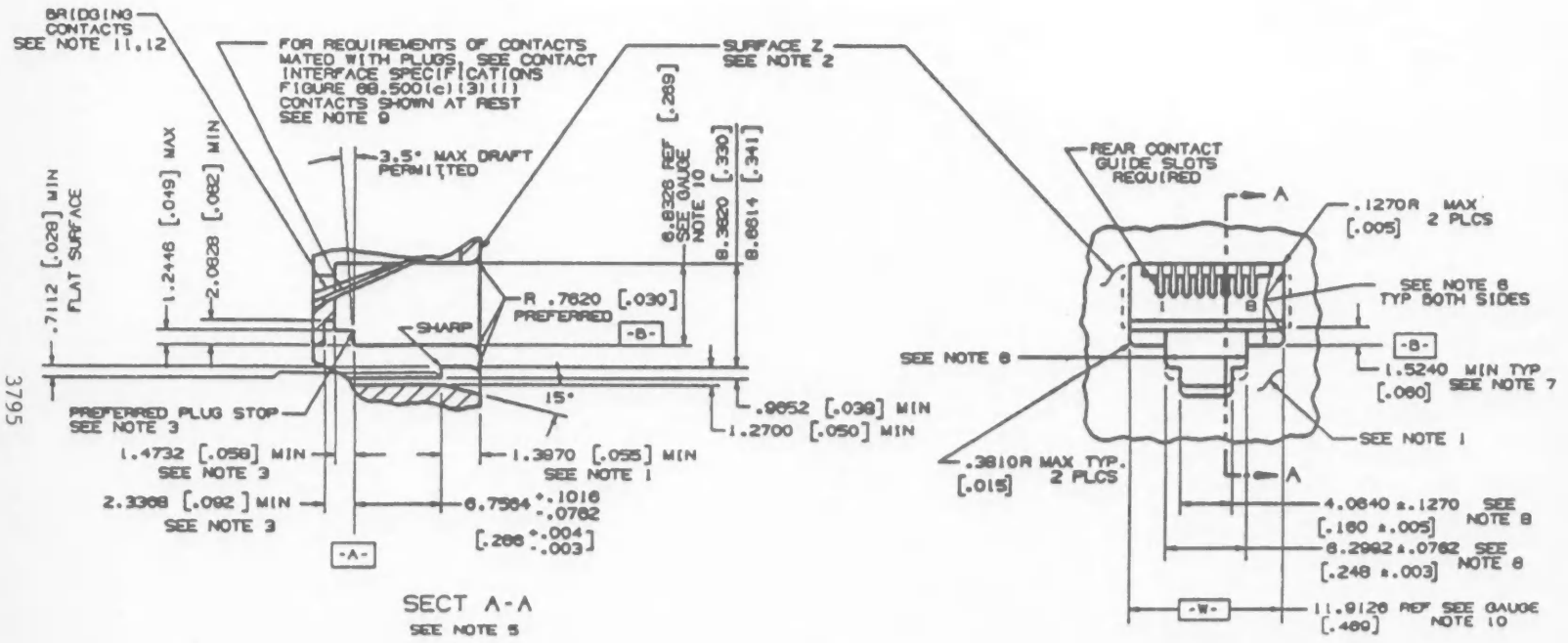
4. DO NOT SCALE DRAWINGS FOR EXTERNAL CONFIGURATION.

FIGURE 68.500(c)(5)(i)-8 POSITION UNKEYED PLUG, MAXIMUM PLUG SIZE

(d) * * *

* * * * *

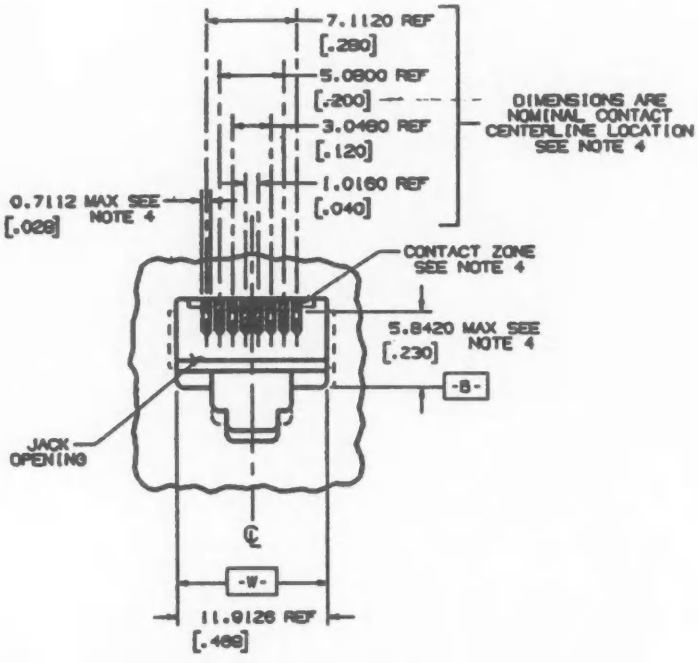
NOTE: THIS JACK IS DEPICTED WITH 8 CONTACTS. IT MAY BE FABRICATED WITH LESS THAN 8 CONTACTS.


BRIDGING CONTACTS SEE NOTE 11,12
FOR REQUIREMENTS OF CONTACTS MATED WITH PLUGS, SEE CONTACT INTERFACE SPECIFICATIONS FIGURE 68.500(c)(3)(i) CONTACTS SHOWN AT REST SEE NOTE 9
SURFACE Z SEE NOTE 2
3.5° MAX DRAFT PERMITTED
.7112 [.028] MIN FLAT SURFACE
1.2446 [.049] MAX
2.0828 [.082] MIN
8.8328 REF [.289] SEE GAUGE NOTE 10
8.3820 [.330]
8.6814 [.341]
R .7620 [.030] PREFERRED
SHARP
-B-
15°
PREFERRED PLUG STOP SEE NOTE 3
.9652 [.038] MIN
1.2700 [.050] MIN
1.4732 [.058] MIN SEE NOTE 3
1.3970 [.055] MIN SEE NOTE 1
2.3368 [.092] MIN SEE NOTE 3
6.7564 +.1016 -.0762 [.266 +.004 -.003]
-A-
SECT A-A
SEE NOTE 5
REAR CONTACT GUIDE SLOTS REQUIRED
.1270R MAX [.005] 2 PLCS
SEE NOTE 8 TYP BOTH SIDES
SEE NOTE 8
1.5240 MIN TYP [.060] SEE NOTE 7
SEE NOTE 1
.3810R MAX TYP. [.015] 2 PLCS
4.0640 ±.1270 [.160 ±.005] SEE NOTE 8
8.2992 ±.0762 [.248 ±.003] SEE NOTE 8
-W-
11.9126 REF [.469] SEE GAUGE NOTE 10

3795

NOTE: ALL NOTES FOLLOW FIGURE 68.500(d)(3)(i).

FIGURE 68.500(d)(2)(i)-8 POSITION SERIES
JACK, MECHANICAL SPECIFICATION



VIEW OF CONTACT ZONE

NOTE: ALL NOTES FOLLOW THIS FIGURE.

FIGURE 68.500(d)(3)(i)-8 POSITION SERIES
JACK, MECHANICAL SPECIFICATION (CONTINUED)

NOTES: (Notes apply to Figures 68.500(d)(2)(i) and 68.500(d)(3)(i))

1. Front surface projections beyond the 1.3970 mm (.055 inch) minimum shall be configured so as not to prevent finger access to the plug release catch (Reference Figure 68.500(a)(2)(i) and Figure 68.500(c)(2)(i) 6 and 8-Position Plug, Mechanical Specifications). A catch length greater than 1.3970 mm (.055 inch) is beneficial in providing for greater breakout strength and improved guidance when interfacing with a 6-position plug.

* * * * *

3. The preferred plug stop surface is indicated. If some other internal feature is used as a plug stop, it must be located so that the axial movement of a latched plug is no greater than 1.1430 mm (.045 inch).

4. To prevent mistargeting between the plug and jack contacts, the jack contacts should be completely contained in their individual contact zones, (.7112 mm (.028 inch) max. wide), where they extend into the jack openings. There is no location requirement for jack contacts below these zones (5.8420 mm (.230 inch) max.), but adequate contact separation must be maintained to prevent electrical breakdown. These shaded contact zones should be centrally located, (include all locating tolerances), about the jack opening width 11.9126 mm (.469 inch) Ref, (Datum -W-). Contacts located outside of these zones may result in mistargeting between the jack and plug contacts.

5. All inside and outside corners in the plug cavity to be .3810 mm (.015 inch) radius max. unless specified.

* * * * *

7. Relief inside the dotted areas on both sides of the jack opening is permitted. The 6.8326 mm (.269 inch) Ref and 11.9126 mm (.469 inch) Ref Gauge Requirements must be maintained in each of the corners indicated, (Ref. 1.5240 mm (.060 inch) min), to assure proper plug/jack interface guidance.

8. 4.0640 mm (.160 inch) and 6.2992 mm (0.248 inch) dimensions to be centrally located to jack opening width -W- within +/- .1270 mm (.005 inch).

* * * * *

10. Gauge Requirements:

GO: The jack shall be capable of accepting an 11.7856 x 6.7056 mm (.4640 x .2640 inch) gauge and the gauge shall be capable of being removed with a maximum force of 8.9 newtons (2.0 pounds).

NO GO: The jack shall not accept either a 12.0396 x 6.4516 mm (.4740 x .254 inch) horizontal width of opening gauge or a 6.9596 x 11.5824 mm (.2740 x .456 inch vertical height of opening gauge. However, if the gauge is accepted, the force necessary to remove the gauge shall be a minimum of .83 newtons (3.0 ounces).

* * * * *

Gauges shall have a .7620 mm (.030 inch) radius on the nose and a .3810 mm (.015 inch) radius on all edges with clearance provided for contacts.

* * * * *

12. The jack contact/bridging interface should be hard gold to hard gold and should have a minimum gold thickness of .0012700 mm (.000050 inch) on each side of the interface. The minimum contact bridging force should be .294 N (30 grams). Any non-gold contact material must be compatible with gold and provide equivalent contact performance.

(e) 50-Position Miniature Ribbon Plug:

(1) Contact finish in the region of contact shall be gold, .0007620 mm (.000030 inch) minimum thickness, electrodeposited hard gold preferred.[1]

* * * * *

(3) The center line of each contact shall be located within .2286 mm (.009 inch) of true position with respect to "Datum B".[1]

(4) Contact width at region of contact shall be 1.1430 +/- .0508 mm (.045 +/- 0.002 inch).[1]

(5) Center line of shell dimension indicated shall be within .1270 mm (.005 inch) of "Datum B".[1]

(6) Center line of barrier dimension indicated shall be within .1270 mm (.005 inch) of "Datum B".[1]

(7) "Surface X" shall have a .0001016 mm (4 microinch) finish or better; finishing shall be done in the direction of the arrow.[2]

(8) A force of not more than 178 newtons (40 pounds) shall be sufficient to fully insert the plug onto the sizing gauge shown on Figure 68.500(e)(1). The plug is fully inserted when "Surface A" of the plug[1] touches "Surface A" of the sizing gauge.

(9) After one insertion of the plug on the sizing gauge, Figure 68.500(e)(2), a force of not more than 44.5 newtons (10 pounds) shall be sufficient to fully insert the plug on the continuity gauge shown in Figure 68.500(e)(3). The plug is fully inserted on the continuity gauge when "Surface A" of the plug[1] touches "Surface A" of the continuity gauge.

* * * * *

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[1] Figure 68.500(e)(1).

[2] Figures 68.500(e)(2) and (e)(3).

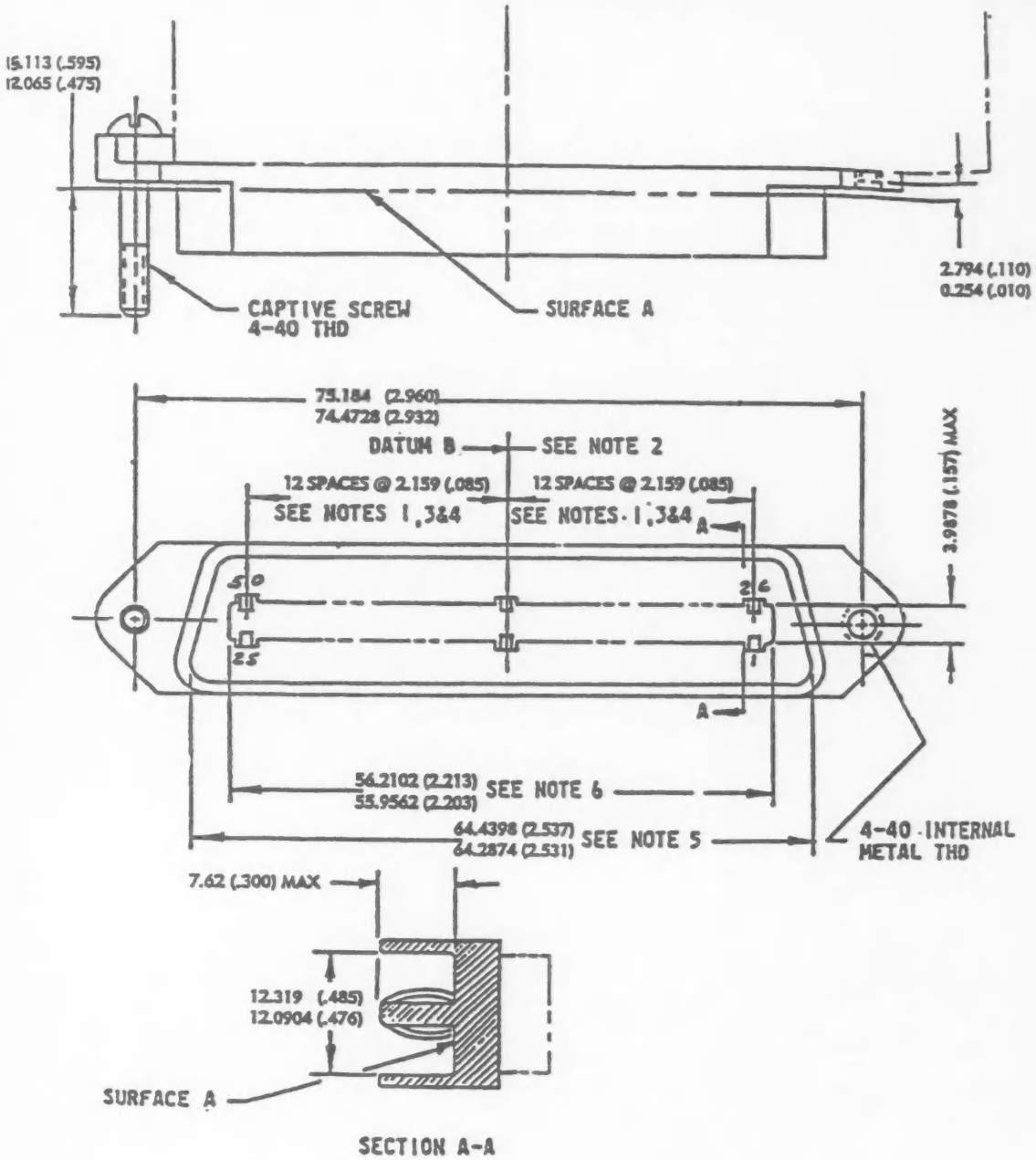

Figure 68.500(a)(1)--50 Position
Miniature Ribbon Plug

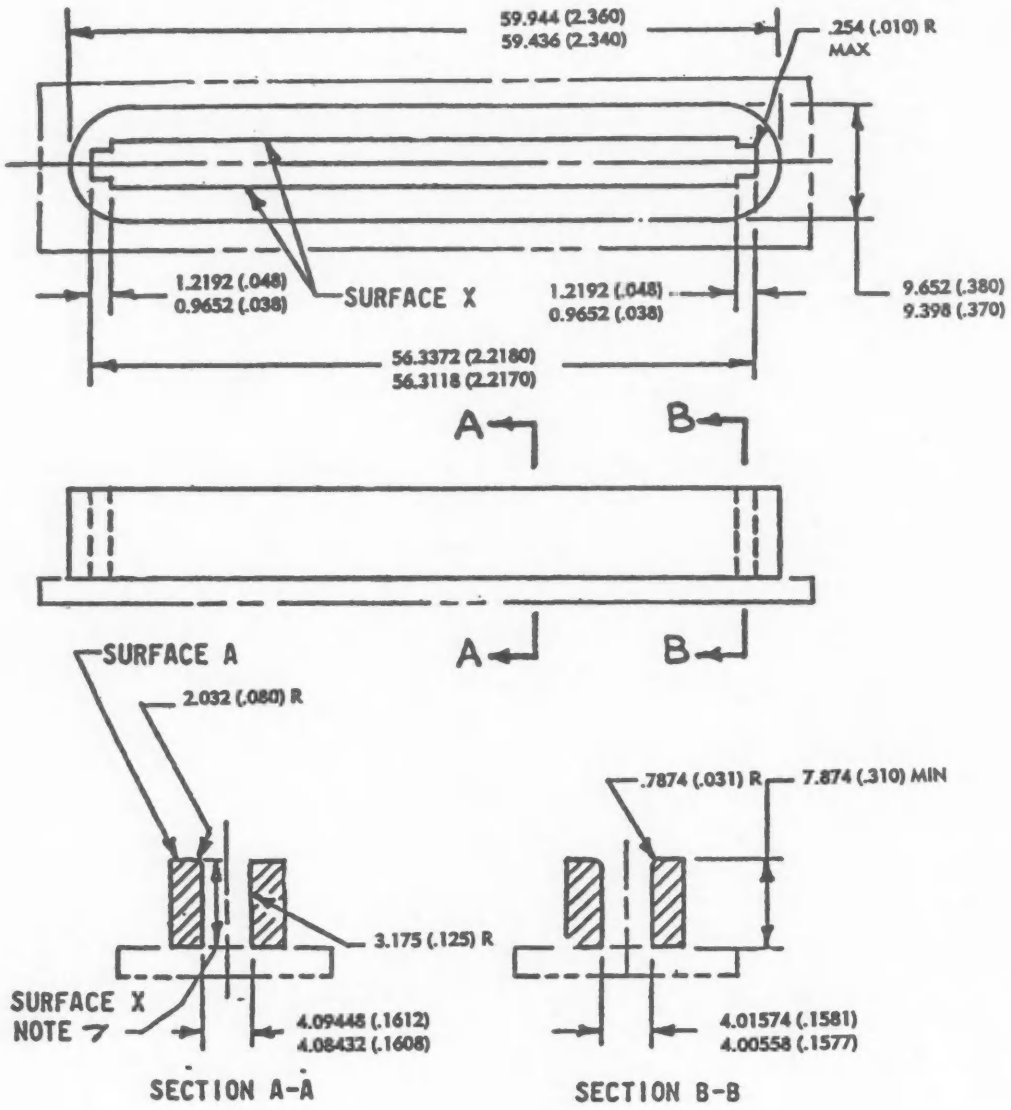

Figure 68.500(e)(2)--50 Position
Miniature Ribbon Plug
Sizing Guage

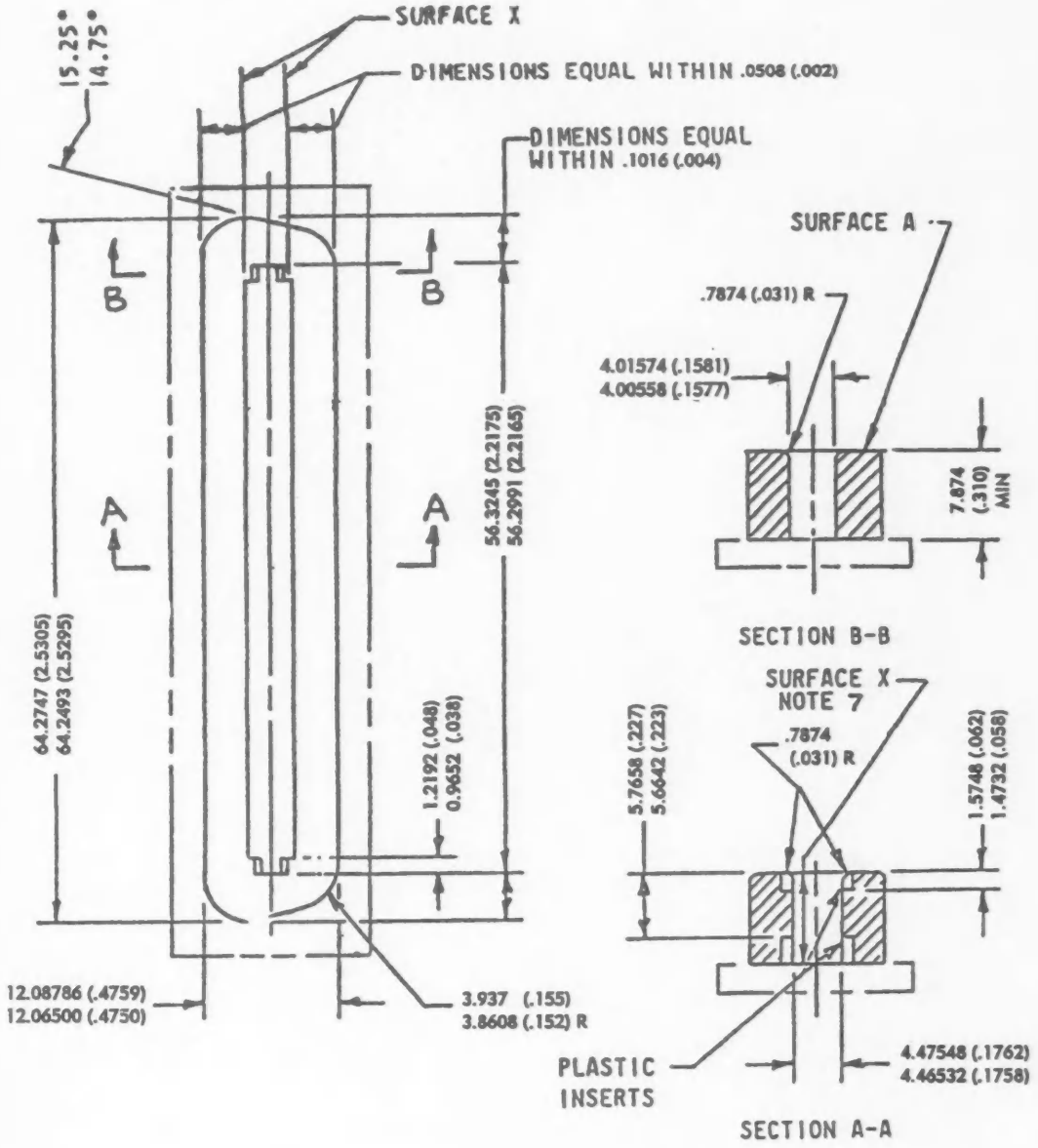

Figure 68.500(e)(3)--50 Position
Miniature Ribbon Plug
Continuity Guage

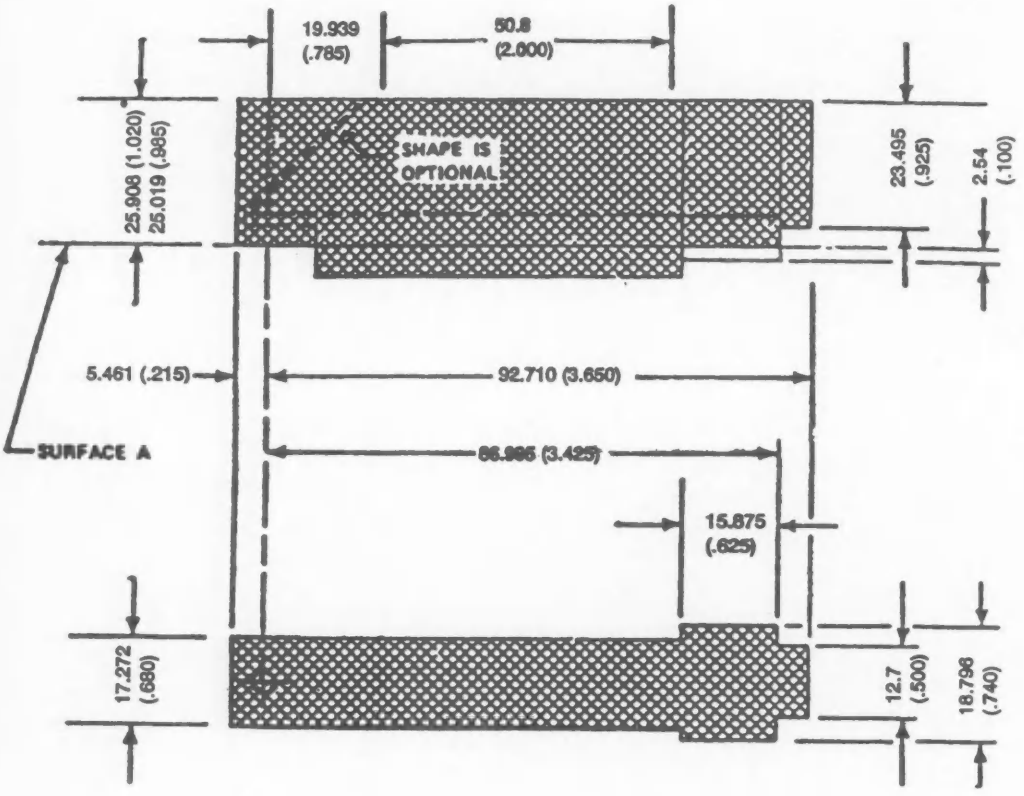

Figure 68.500(e)(4)

50-POSITION MINIATURE RIBBON PLUG - HOOD ENVELOPE

(f) 50-position miniature ribbon jack:

(1) Contact finish in the region of contact shall be gold, .0007620 mm (.000030 inch) minimum thickness, electrodeposited hard gold preferred.[1]

* * * * *

(3) The center line of each contact shall be located within .2286 mm (.009 inch) of true position with respect to "Datum B".[1]

(4) Contact width at region of contact shall be 1.1430 +/- .0508 mm (.045 +/- 0.002 inch).[1]

(5) Center line of shell dimension indicated shall be within .1270 mm (.005 inch) of "Datum B".[1]

(6) Center line of cavity dimension indicated shall be within .1270 mm (.005 inch of "Datum B".[1]

(7) "Surface X" shall have a .0001016 mm (4 microinch) finish or better; finishing shall be done in the direction of the arrow.[2]

(8) A force of not more than 134 newtons (30 pounds) shall be sufficient to fully insert the jack onto the sizing gauge shown on Figure 68.500(f)(2). The jack is fully inserted when "Surface A" of the jack[1] touches "Surface A" of the sizing gauge.

(9) After one insertion of the jack on the sizing gauge, Figure 68.500(f)(2), a force of not more than 44.5 newtons (10 pounds) shall be sufficient to fully insert the jack on the continuity gauge shown in Figure 68.500(f)(3). The jack is fully inserted on the continuity gauge when "Surface A" of the jack[1] touches "Surface A" of the continuity gauge.

* * * * *

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[1] Figure 68.500(f)(1).

[2] Figures 68.500(f)(2) and (f)(3).

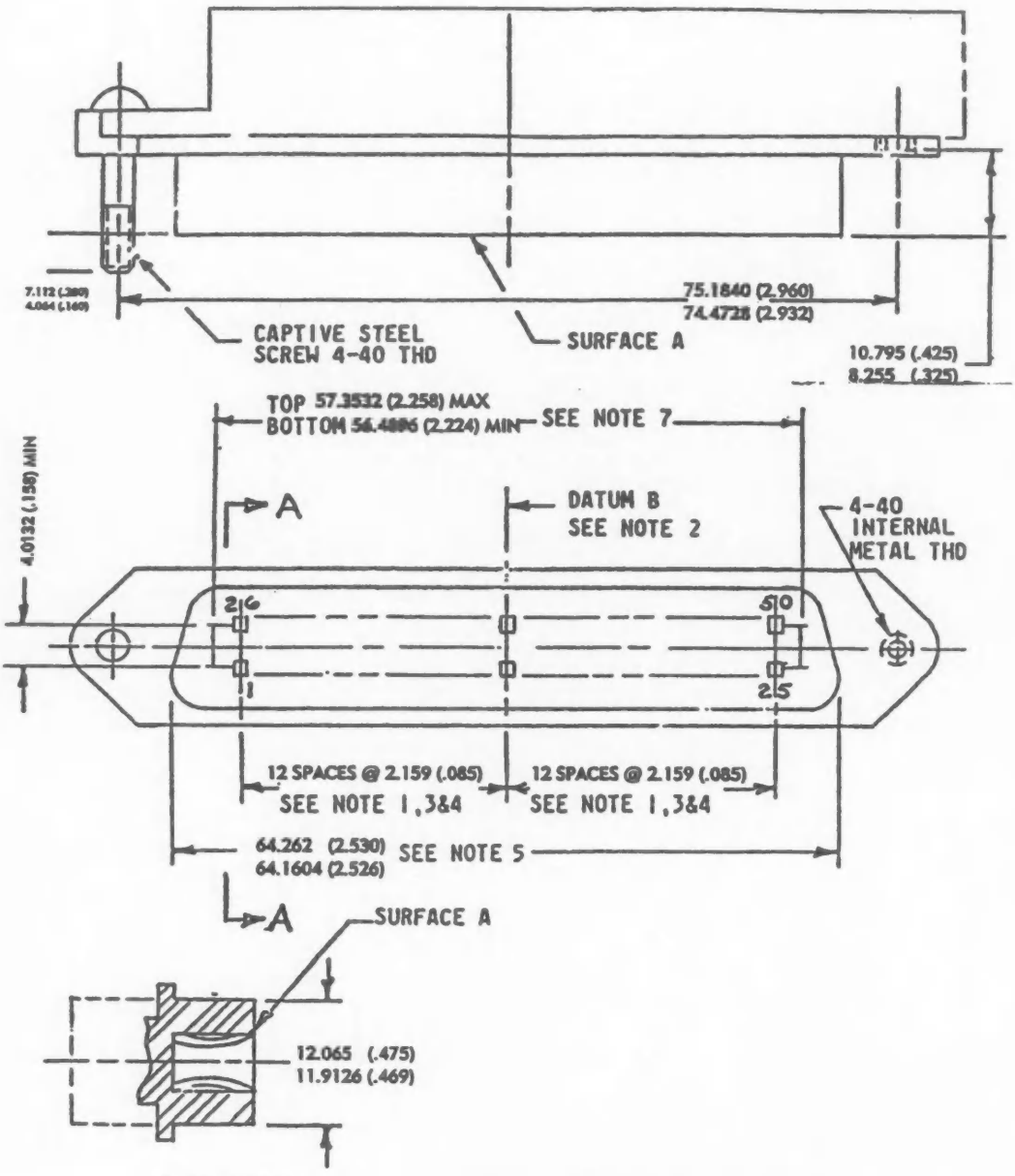
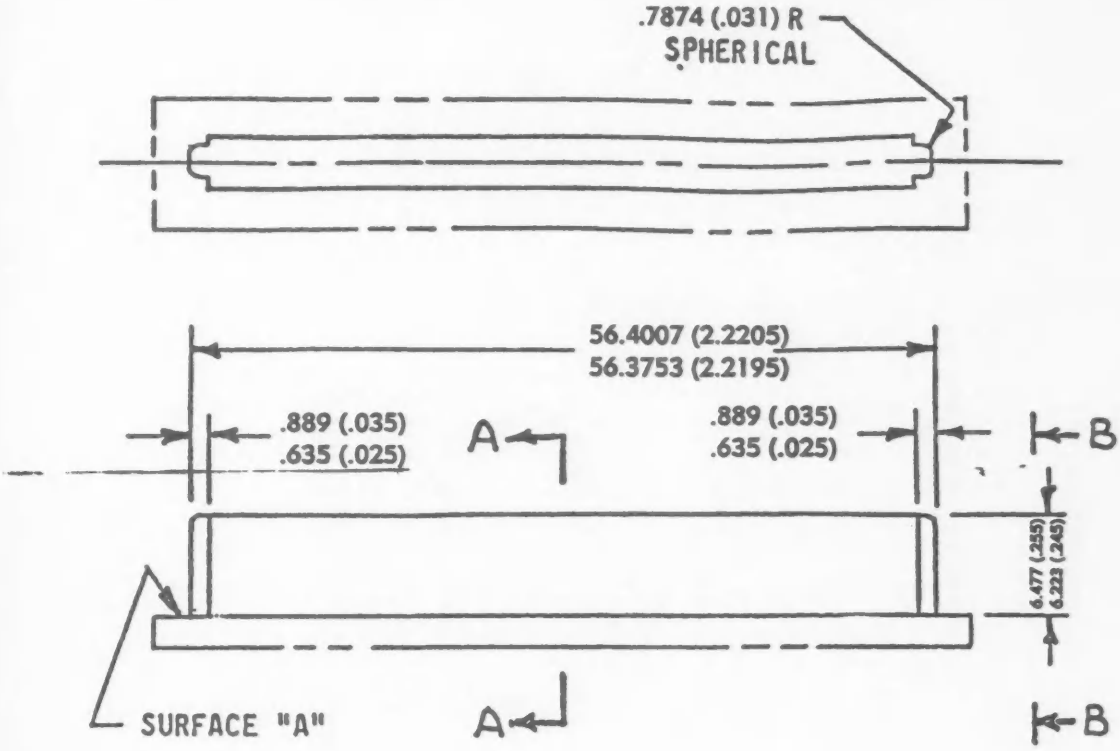


Figure 68.500(f)(1)--50 Position
Miniature Ribbon Jack



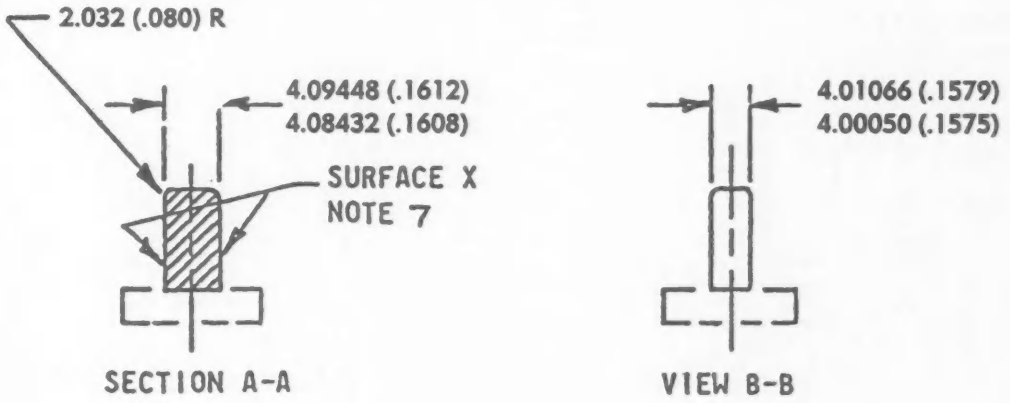


Figure 68.500(f)(2)--50 Position
Miniature Ribbon Jack
Sizing Guage

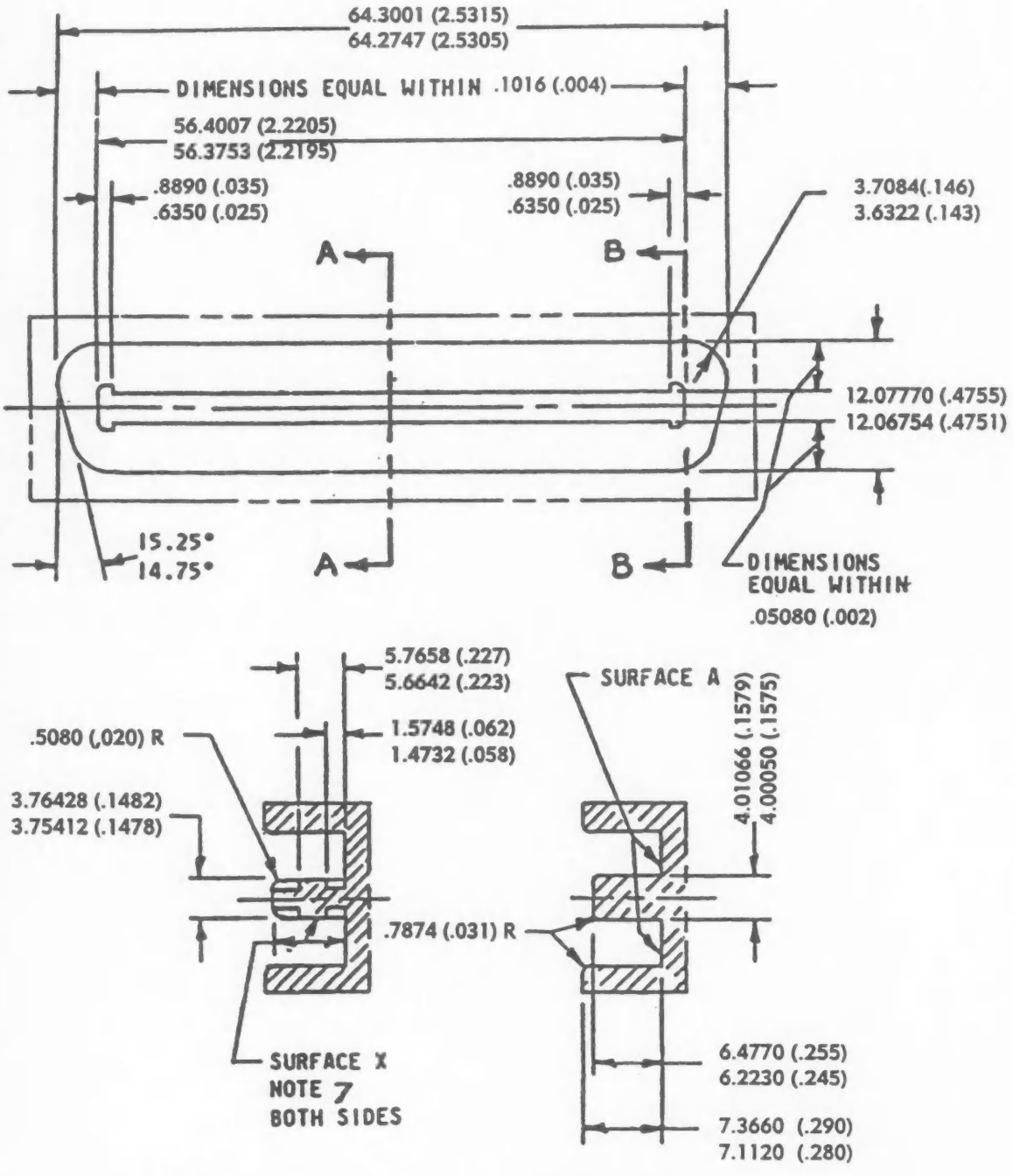


Figure 68.500(f)(3)--50 Position
Miniature Ribbon Jack
Continuity Guage

(g) 3-Position weatherproof plug:
Contact blade material shall be brass, with minimum .00762 mm (.0003 inch) thick nickel plating.

NOTE: All linear dimensions are in millimeters (inches).

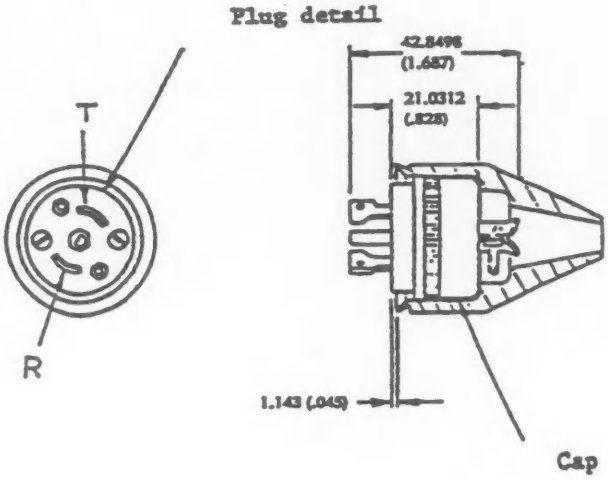


Figure 68.500(g)(1)--3 Position Plug
Plug Assembly

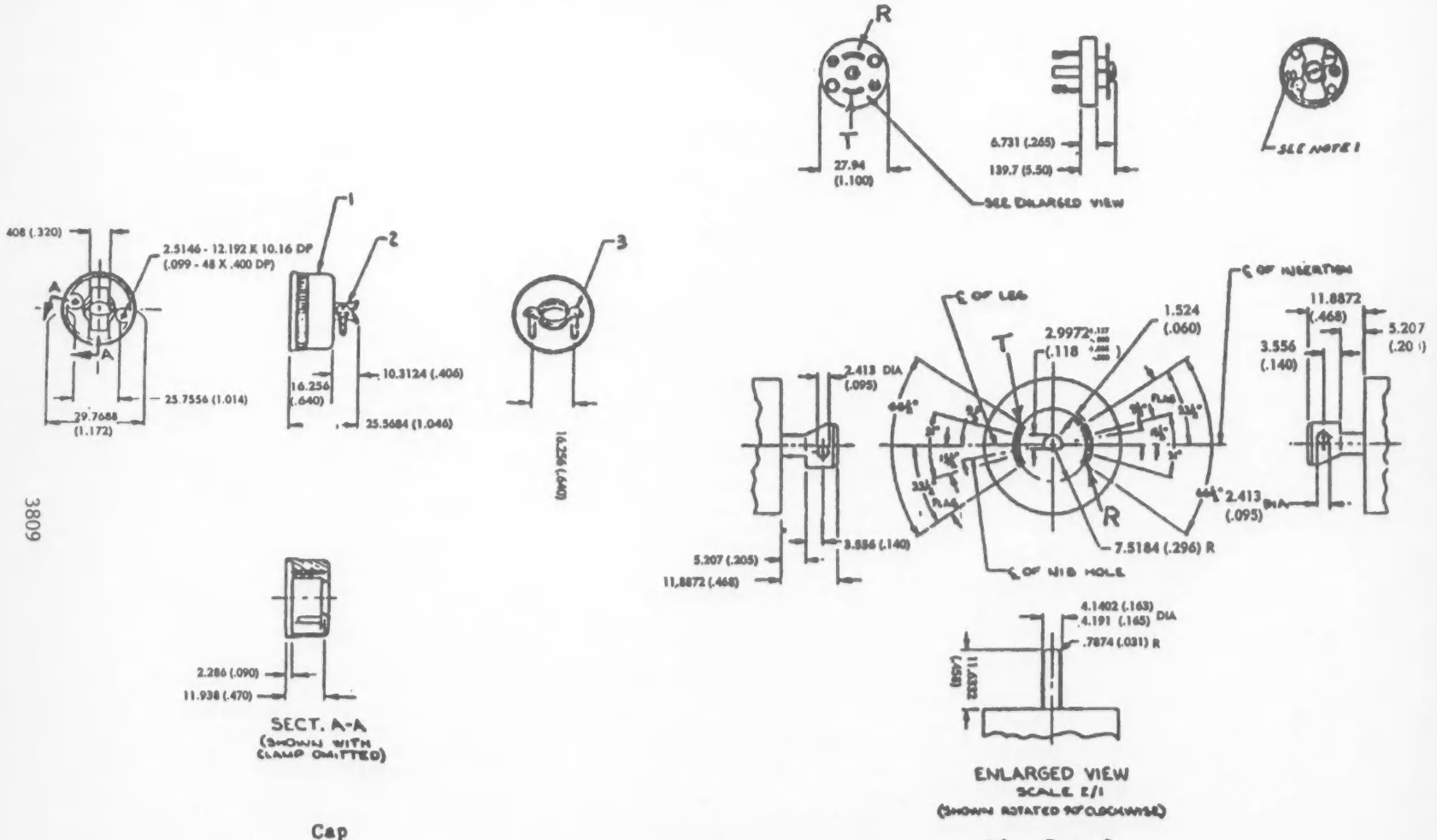


Figure 68.500(g)(2)--3 Position
Plug Detail

(h) 3-Position weatherproof jack:
Contact blade material shall be brass, with minimum .00762 mm (.0003 inch) thick nickel plating.

NOTE: All linear dimensions are in millimeters (inches).

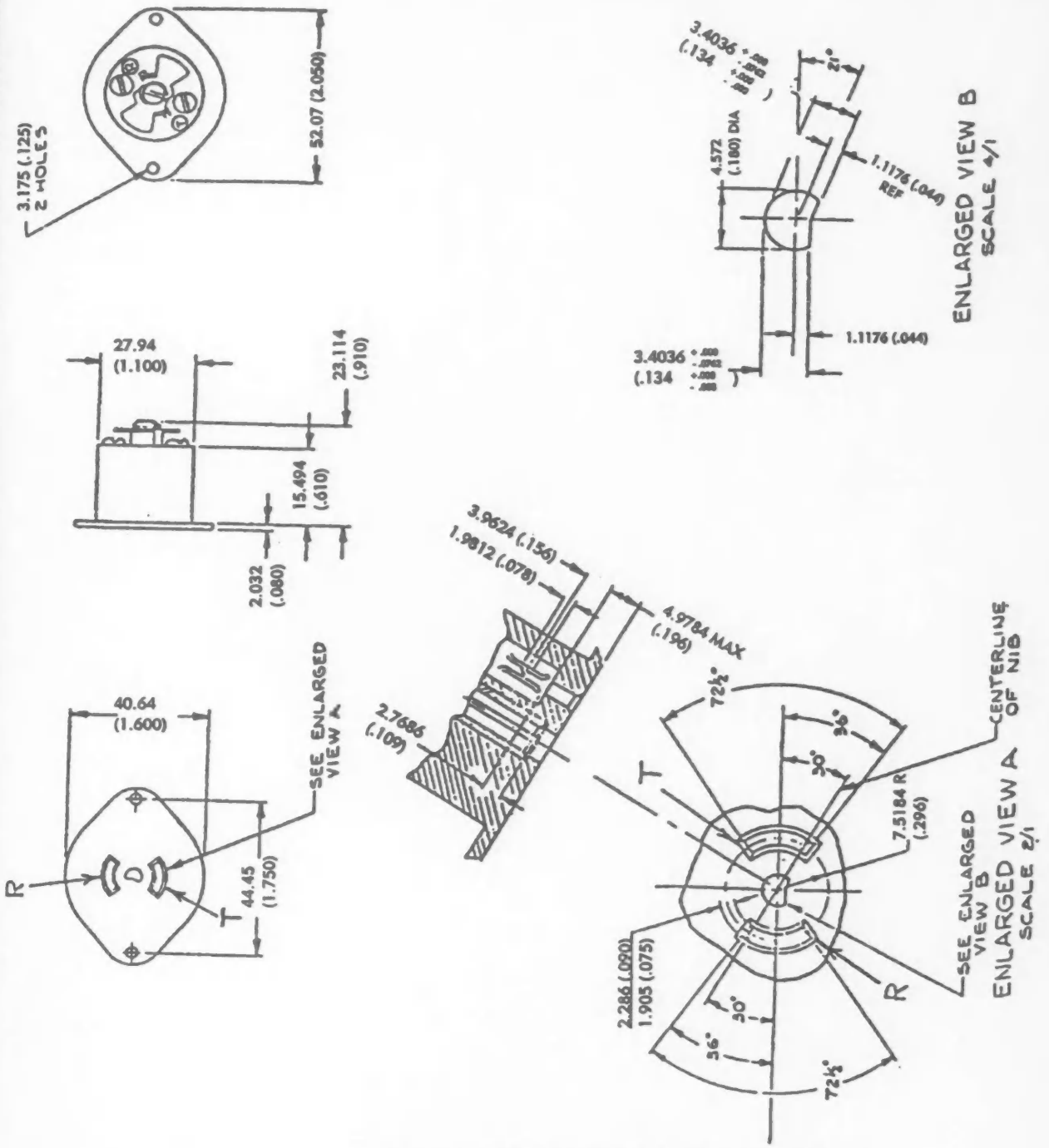
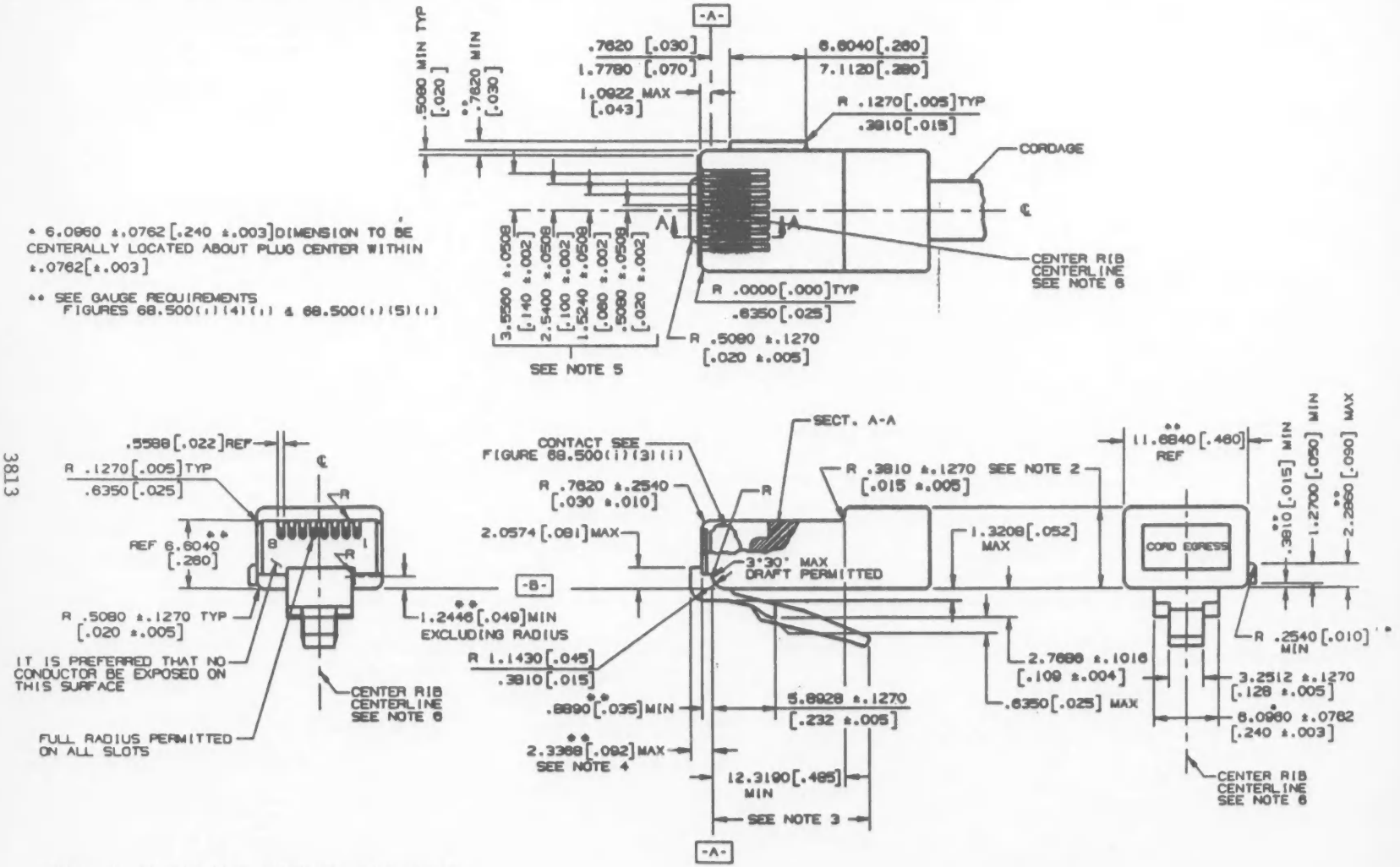


Figure 68.500(h)--3 Position Plug Detail

(i) * * *

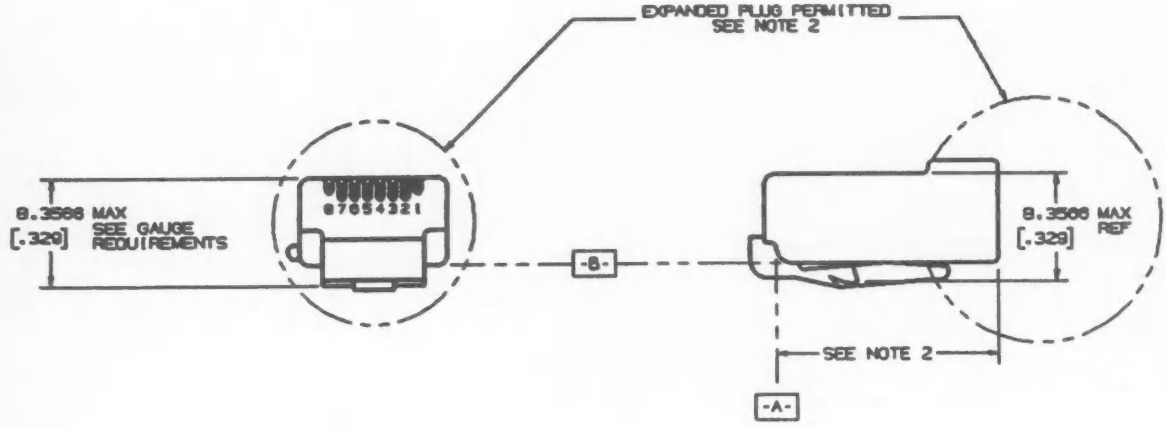
* * * * *

NOTE: THIS PLUG IS DEPICTED WITH ITS FULL 8 CONTACT CAPACITY.
IT MAY BE FABRICATED WITH LESS THAN 8 CONTACTS.



NOTE: ALL NOTES FOLLOW FIGURE 68.500(i)(2)(ii).

FIGURE 68.500(i)(2)(i)- 8 POSITION KEYED PLUG, MECHANICAL SPECIFICATION



NOTE: ALL NOTES FOLLOW THIS FIGURE

FIGURE 68.500(i)(2)(ii) - 8 POSITION KEYED PLUG, MECHANICAL SPECIFICATION (CONTINUED)

NOTES: (Notes apply to Figures 68.500(i)(2)(i) and 68.500(i)(2)(ii))

* * * * *

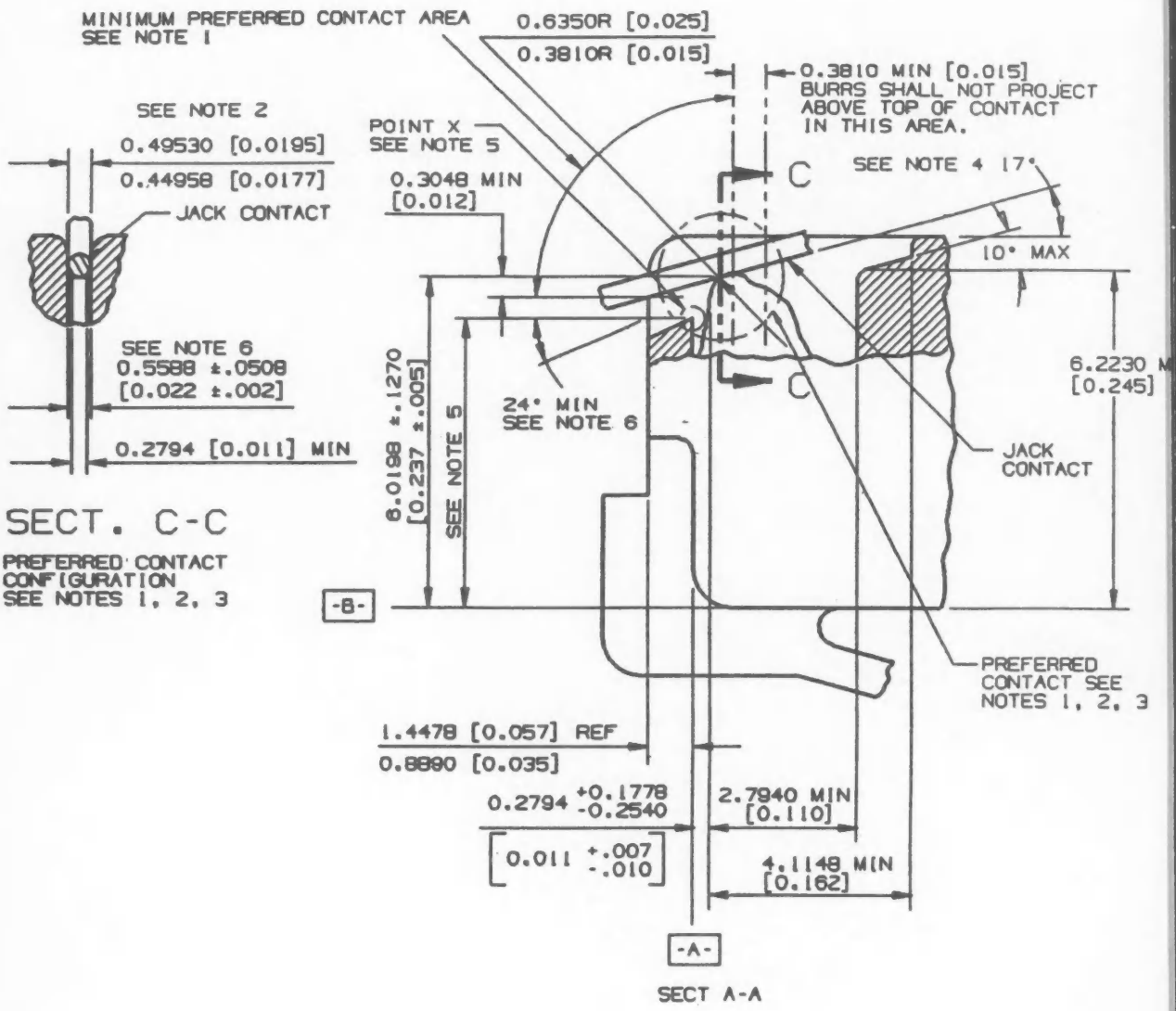
2. The standard plug height in the area shown is 8.0010 mm (.315 inch) maximum. The standard plug length is 23.1140 mm (.910 inch) maximum. Plugs may be made longer than standard or adapted for direct use on special cords, adapters without cordage, apparatus or equipment subject to the limitations described in the introductory paragraphs of 68.500. Plugs longer and/or higher than standard may inhibit the special features of some network jack enclosures.

3. A 14.6050 mm (.575 inch) minimum tab length is required. It is preferred that a maximum tab length be no longer than 15.8750 mm (.625 inch). Longer tabs may be used with the same limitations described in Note 2.

4. To obtain maximum plug guidance in jacks, it is desirable to extend the front plug nose to the 2.3368 mm (.092 inch) maximum.

* * * * *

6. The center rib centerline shall be coincident with the plug width, 11.6840 mm ref (.460 inch ref.) center line within +/- .0762 mm (+/- .003 inch).



NOTE: ALL NOTES FOLLOW THIS FIGURE.

NOTE: THE 6 POSITION PLUG/JACK CONTACT SPECIFICATION IS IDENTICAL.

FIGURE 68.500(i)(3)(ii)- 8 POSITION KEYED PLUG

PLUG /JACK CONTACT SPECIFICATION

NOTES: (Notes apply to Figure 68.500(i)(3)(i))

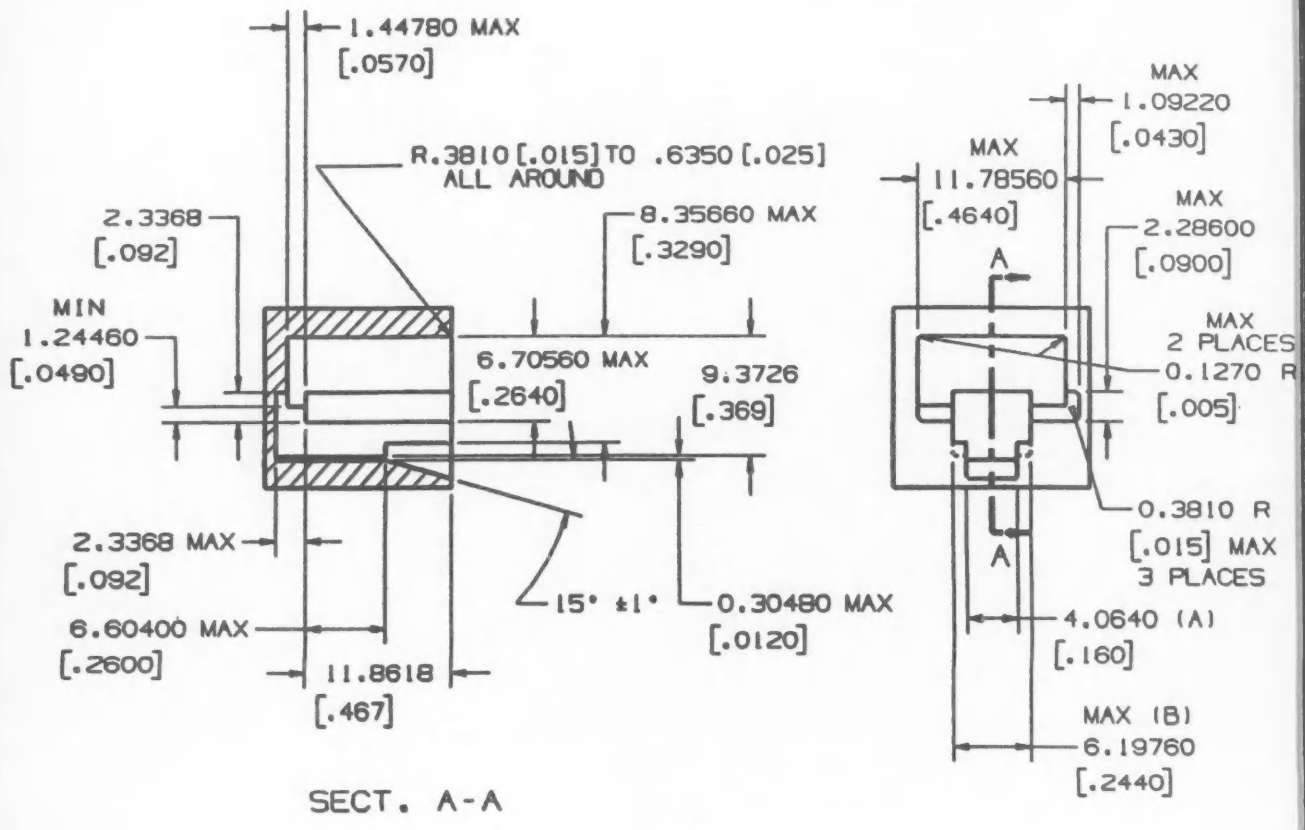
1. The plug/jack contact interface should be hard gold to hard gold and should have a minimum gold thickness of .0012700 mm (.000050 inch) on each side of the interface. The minimum contact force should be .98 N (100 grams). Any non-gold contact material must be compatible with gold and provide equivalent contact performance. A smooth, burr-free surface is required at the interface in the area shown.

2. The jack contact design is based upon .4572 mm (.018 inch) spring temper phosphor bronze round wire in the modular plug blade and jack contact interface. Other contact configurations that provide contact performance equal to or better than the preferred configurations and do not cause damage to the plug or jack are permitted. The preferred jack contact width is .44958/.49530 mm (.0177/.0195 inches). Deviations from the preferred jack contact width are permitted for round contacts as well as noncircular cross sectional shapes but they must be compatible with existing plug configurations. The requirements of Note 1 apply to all possible contact areas.

* * * * *

5. To avoid loss of electrical contact, the preferred dimension from "Datum B" to the highest point "X" should be 5.0800 mm (.200 inch) max. A dimension greater than 5.3594 mm (.211 inch) may result in loss of electrical contact between plugs and jacks. The 5.3594 mm (.211 inch) max. shall be considered an absolute maximum.

6. The 24 degree min. angle applies only to plugs with front plastic walls higher than 4.8260 mm (.190 inches).



GO GAUGE

NOTES:

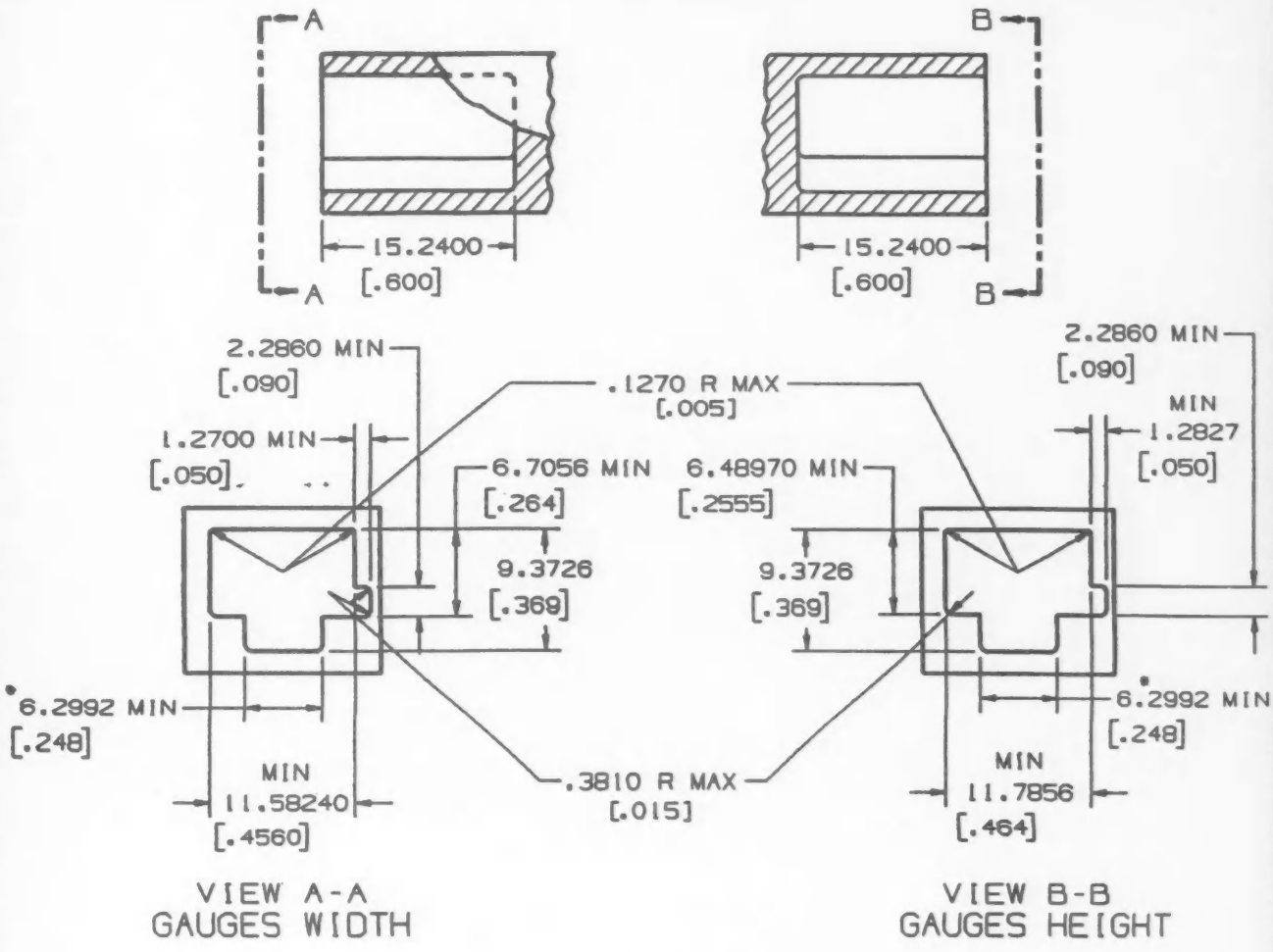
1. THE PLUG SHALL BE CAPABLE OF INSERTION AND LATCHING INTO THE GAUGE WITH 22.24 newtons [5 POUNDS] OR LESS INSERTION FORCE. PLUG LATCHING BAR SHALL BE DEPRESSED SO AS NOT TO INTERFERE WITH THE PLUG ENTRY. AFTER INSERTION AND LATCHING, PLUG SHALL BE CAPABLE OF REMOVAL, WITH THE LATCH DEPRESSED, WITH A REMOVAL FORCE OF 44.48 newtons [10 POUNDS] OR LESS APPLIED AT AN ADVANTAGEOUS ANGLE.

2. DIMENSIONS GIVEN TO FOUR DECIMAL PLACES SHALL BE WITHIN ±.0508mm [.002].

3. DIMENSIONS (A) AND (B) TO BE CENTRALLY LOCATED WITH RESPECT TO 11.78560mm [.4640] MAX. JACK OPENING WIDTH WITHIN ±.0254mm[.001].

4. DO NOT SCALE DRAWINGS FOR EXTERNAL CONFIGURATION.

FIGURE 68.500(i)(4)(i)-8 POSITION KEYED PLUG
MAXIMUM PLUG SIZE



NO-GO GAUGE

NOTES:

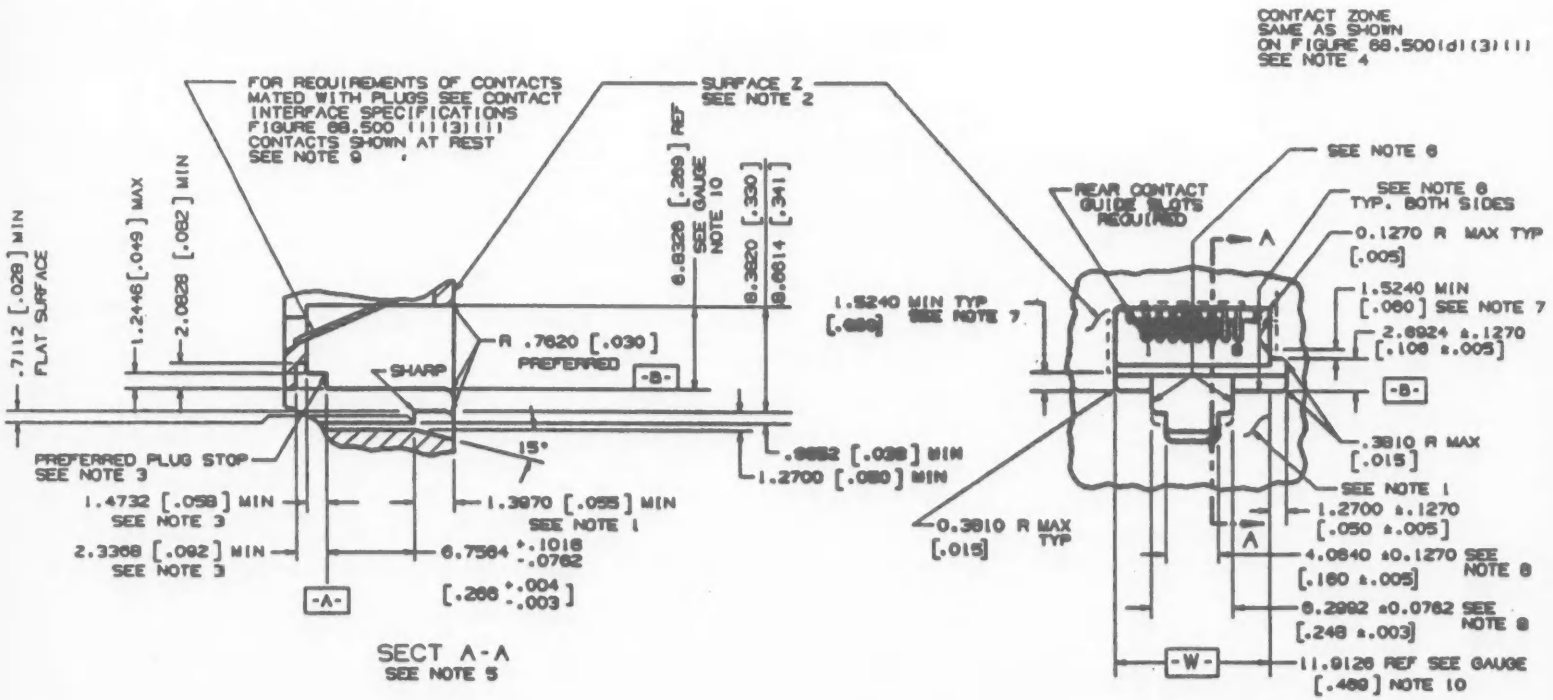
1. THE PLUG SHALL NOT BE CAPABLE OF ENTERING THE GAUGE MORE THAN 1.7780mm [.070] BEYOND DATUM-A- (SEE FIGURE 68.500(i)(2)(i) WITH 8.90 newton [2.0 POUNDS] INSERTION FORCE.
2. NON-TOLERANCED DIMENSIONS GIVEN TO FOUR PLACES SHALL BE WITHIN ±.0508mm [.002].
3. *6.2992mm [.248] DIMENSION TO BE CENTRALLY LOCATED WITH RESPECT TO 11.7856mm [.464] MINIMUM AND 11.58240mm [.4560] MINIMUM WITHIN ±.0508mm [.002].

FIGURE 68.500(i)(5)(i)-8 POSITION KEYED PLUG, MINIMUM PLUG SIZE

(f) * * *

* * * * *

NOTE: THIS JACK IS DEPICTED WITH 8 CONTACTS. IT MAY BE FABRICATED WITH LESS THAN 8 CONTACTS.


FOR REQUIREMENTS OF CONTACTS MATED WITH PLUGS SEE CONTACT INTERFACE SPECIFICATIONS FIGURE 68.500 (1)(3)(1) CONTACTS SHOWN AT REST SEE NOTE 9
SURFACE Z SEE NOTE 2
CONTACT ZONE SAME AS SHOWN ON FIGURE 68.500(d)(3)(1) SEE NOTE 4
.7112 [.028] MIN FLAT SURFACE
1.2446 [.049] MAX
2.0828 [.082] MIN
6.8326 [.269] REF SEE GAUGE NOTE 10
8.3820 [.330]
8.6614 [.341]
R .7620 [.030] PREFERRED
SHARP
-B-
PREFERRED PLUG STOP SEE NOTE 3
15°
.9652 [.038] MIN
1.2700 [.050] MIN
1.4732 [.058] MIN SEE NOTE 3
2.3368 [.092] MIN SEE NOTE 3
1.3970 [.055] MIN SEE NOTE 1
6.7564 +.1016 -.0762 [.266 +.004 -.003]
-A-
SECT A-A SEE NOTE 5
1.5240 MIN TYP [.060] SEE NOTE 7
REAR CONTACT GUIDE SLOTS REQUIRED
SEE NOTE 8
SEE NOTE 8 TYP. BOTH SIDES
0.1270 R MAX TYP [.005]
1.5240 MIN [.060] SEE NOTE 7
2.8924 ±.1270 [.108 ±.005]
.3810 R MAX [.015]
SEE NOTE 1
1.2700 ±.1270 [.050 ±.005]
0.3810 R MAX TYP [.015]
4.0640 ±0.1270 SEE NOTE 8 [.160 ±.005]
6.2992 ±0.0762 SEE NOTE 8 [.248 ±.003]
-W-
11.9126 REF SEE GAUGE [.469] NOTE 10

NOTE: ALL NOTES FOLLOW THIS FIGURE

FIGURE 68.500(J)(2)(1)-8 POSITION KEYED JACK MECHANICAL SPECIFICATION

NOTES: (Notes apply to Figure 68.500(j)(2)(i))

1. Front surface projections beyond the 1.3970 mm (.055 inch) minimum shall be configured so as not to prevent finger access to the plug release catch (Reference Figure 68.500(i)(2)(ii) and 8-Position Plug, Mechanical Specifications). A catch length greater than 1.3970 mm (.055 inch) is beneficial in providing for greater breakout strength and improved guidance when interfacing with a 6-position plug.

* * * * *

3. The preferred plug stop surface is indicated. If some other internal feature is used as a plug stop, it must be located so that the axial movement of a latched plug is no greater than 1.1430 mm (.045 inch).

4. To prevent mistargeting between the plug and jack contacts, the jack contacts should be completely contained in their individual contact zones, (.7112 mm (.028 inch) max wide), where they extend into the jack openings. There is no location requirement for jack contacts below these zones (5.8420 mm (.230 inch) max), but adequate contact separation must be maintained to prevent electrical breakdown. These shaded contact zones should be centrally located, (include all locating tolerances), about the jack opening width 11.9126 mm (.469 inch) Ref, (Datum -W-). Contacts located outside of these zones may result in mistargeting between the jack and plug contacts.

5. All inside and outside corners in the plug cavity to be .3810 mm (.015 inch) radius max unless specified.

* * * * *

7. Relief inside the dotted areas on both sides of the jack opening is permitted. The 6.8326 mm (.269 inch) Ref and 11.9126 mm (.469 inch) Ref Gauge Requirements must be maintained in each of the corners indicated, (Ref. 1.5240 mm (.060 inch) min), to assure proper plug/jack interface guidance.

8. 4.0640 mm (.160 inch) and 6.2992 mm (.248 inch) dimensions to be centrally located to jack opening width -W- within +/- .1270 mm (.005 inch) .

* * * * *

10. Gauge Requirements:

GO: The jack shall be capable of accepting an 11.78560 x 6.70560 mm (.4640 x .2640 inch) gauge and the gauge shall be capable of being removed with a maximum force of 8.9 newtons (2.0 pounds).

NO GO: The jack shall not accept either a 12.03960 x 6.4516 mm (.4740 x .254 inch) horizontal width of opening gauge or a 6.95960 x 11.5824 mm (.2740 x .456 inch) vertical height of opening gauge. However, if the gauge is accepted, the force necessary to remove the gauge shall be minimum of .83 newtons (3.0 ounces).

Removal forces do not include forces contributed by contact springs nor shall external forces be applied to the jack that will affect these removal forces.

Gauges shall have a .7620 mm (.030 inch) radius on the nose and a .3810 mm (.015 inch) radius on all edges with clearance provided for contacts.

PART 69--ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

AUTHORITY: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Paragraphs (a)(1) and (a)(2) of Section 69.108 are amended to read as follows. The rest of Section 69.108 remains unchanged.

Section 69.108 Transport rate benchmark.

(a) * * *

(1) The total charge for a 1.609 km (1 mi) channel termination, 16.09 km (10 mi) of interoffice transmission, and one DS3 multiplexer using the telephone company's DS3 special access rates to;

(2) The total charge for a 1.609 km (1 mi) channel termination plus 16.09 km (10 mi) of interoffice transmission using the telephone company's DS1 special access rates.

* * * * *

3. In Section 69.110 replace the first and third occurances of "mileage" with "distance" and all other occurances of "mileage" with "kilometers".

4. In Section 69.111 replace the first occurance of "mileage" with "distance" and the second occurance of "mileage" with "kilometers".

5. In Section 69.112 replace the first and third occurances of "mileage" with "distance" and all other occurances of "mileage" with "kilometers".

6. In Section 69.125 replace the first occurance of "mileage" with "distance" and the second occurance of "mileage" with "kilometers".

PART 73--RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303.

2. Section 73.312 is amended to read as follows:

Section 73.312 Topographic data.

* * * * *

(b) The Commission will not ordinarily require the submission of topographical maps for areas beyond 24 km (15 miles) from the antenna site, but the maps must include the principal city or cities to be served. If it appears necessary additional data may be requested.

* * * * *

3. Section 73.316 is amended to read as follows:

Section 73.316 FM antenna systems.

* * * * *

(c) * * *

(2) * * * The horizontal plane pattern must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 18 cm x 25 cm (7 inches x 10 inches)) using only scale divisions and subdivisions of 1, 2, 2.5, or 5 times 10-nth. * * *

* * * * *

4. Footnote 2 in paragraph (a) of Section 73.501 is amended to read as follows:

Section 73.501 Channels available for assignment.

(a) * * *

2/ The frequency 89.1 MHz, Channel 206, in the New York City metropolitan area, is reserved for the use of the United Nations with the equivalent of an antenna height of 150 meters (492 feet) above average terrain and effective radiated power of 20 kW and the Commission will make no assignments which would cause objectionable interference with such use.

* * * * *

5. Section 73.681 is amended to read as follows:

Section 73.681 Definitions.

* * * * *

Antenna power gain. The square of the ratio of the root-mean-square free space field strength produced at 1 kilometer in the horizontal plane, in millivolts per meter for one kW antenna input power to 221.4 mV/m. * * *

* * * * *

6. Section 73.685 is amended to read as follows:

Section 73.685 Transmitter location and antenna system.

* * * * *

(f) * * *

(5) All horizontal plane patterns must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 18 cm x 25 cm (7 inches x 10 inches) using only scale divisions and subdivisions of 1, 2, 2.5 or 5 times 10-nth. * * *

7. Section 73.1820 is amended to read as follows:

Section 73.1820 Station log.

* * * * *

(b) * * *

(8) The indicating equipment conforms to the requirements of Section 73.1215 (Indicating instruments--specifications) except that the scales need not exceed 5 cm (2 inches) in length. Arbitrary scales may not be used.

* * * * *

PART 74--EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for Part 74 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 74.735 is amended to read as follows:

Section 74.735 Power limitation.

* * * * *

(c) * * *

(4) All horizontal plane patterns must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 18 cm x 25 cm (7 inches x 10 inches)) using only scale divisions and subdivisions of 1, 2, 2.5, or 5 times 10-nth. * * *

* * * * *

3. Section 74.902 is amended to read as follows:

Section 74.902 Frequency assignments.

* * * * *

(f) A temporary fixed ITFS station may use any available ITFS channel on a secondary basis. Operation of stations located within 56.3 km (35 miles) of Canada shall be limited by Section 74.24(h)(3) of this subpart.

* * * * *

4. Section 74.903 is amended to read as follows:

Section 74.903 Interference.

* * * * *

(b) * * *

(1) * * *

(ii) The proposed transmitter is within 80.5 km (50 miles) of the coordinates of any such station.

(2) An analysis of the potential for harmful adjacent channel interference with any authorized or previously proposed station(s) if the proposed transmitter is within 80.5 km (50 miles) of the coordinates of any other station(s) that utilize(s), or would utilize, an adjacent channel frequency.

(3) An analysis concerning possible adverse impact upon Mexican and Canadian communications if the station's transmitting antenna is to be located within 80.5 km (50 miles) of the border.

* * * * *

5. Section 74.931 is amended to read as follows:

Section 74.931 Purpose and permissible service.

* * * * *

(e) * * *

(9) * * * is within 32 km (20 miles) of * * *

(10) * * * MDS channel within 32 km (20 miles) of the cable television franchise area or service area for this purpose, and, within 32 km (20 miles) of the cable * * *

* * * * *

6. Section 74.935 is amended to read as follows:

Section 74.935 Power limitations.

* * * * *

(c) * * * with a transmitter site within 80.5 km (50 miles) of * * *

* * * * *

7. Section 74.937 is amended to read as follows:

Section 74.937 Antennas.

(a) * * * However, for the purpose of interference calculations, the general characteristics of the reference receiving antenna shown in Figure 1 of this section (i.e., a 0.6 meter (2 foot) parabolic reflector antenna) are assumed to be used in accordance with the provisions of Section 74.903(a)(3) unless pertinent data is submitted of the actual antenna in use at the receive site. * * *

* * * * *

8. Section 74.985 is amended to read as follows:

Section 74.985 Signal booster stations.

* * * * *

(d) * * * within 80.5 km (50 miles) of * * *

* * * * *

(g) * * * within 8 km (5 miles) of * * *

(5) * * * within an 8 km (5 mile) radius * * *

* * * * *

9. Section 74.990 is amended to read as follows:

Section 74.990 Use of available instructional television fixed service frequencies by wireless cable entities.

(a) * * * or applicants within 80.5 km (50 miles) of * * *

* * * * *

PART 76--CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

AUTHORITY: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended,

1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 76.5 is amended to read as follows:

Section 76.5 Definitions.

* * * * *

(e) Specified zone of a television broadcast station. The area extending 56.3 air km (35 air miles) from the reference point in the community to which that station is licensed or authorized by the Commission. * * *

* * * * *

(jj) Rural area. A community unit with a density of less than 19 households per route kilometer or thirty households per route mile of coaxial and/or fiber optic cable trunk and feeder line.

3. Section 76.66 is amended to read as follows:

Section 76.66 Input selector switches and consumer education.

(a) * * *

(5) * * *

(iv) * * * Such suggestions must include the recommendations that shielded coaxial cable be used between the receiver and the switch terminals and that at least 1.2 meters (4 feet) of shielded coaxial cable be used for connecting switch terminals to any unshielded antenna leads.

* * * * *

4. Section 76.92 is amended to read as follows:

Section 76.92 Network non-duplication; extent of protection.

* * * * *

(d) Any community unit operating in a community to which a 100-watt or higher power translator is located within the predicted Grade B signal contour of the television broadcast station that the translator station retransmits, and which translator is carried by the community unit shall, upon request of such translator station licensee or permittee, delete the duplicating network programming of any television broadcast station whose reference point (See Section 76.53) is more than 88.5 km (55 miles) from the community of the community unit.

(e) Any community unit which operates in a community located in whole or in part within the secondary zone of a smaller market television broadcast station is not required to delete the duplicating network programming of any

major market television broadcast station whose reference point (See Section 76.53) is also within 88.5 km (55 miles) of the community of the community unit.

(f) * * *

NOTE: With respect to network programming, the geographic zone within which the television station is entitled to enforce network non-duplication protection and priority of shall be that geographic area agreed upon between the network and the television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in Section 73.658(m), except that small market television stations shall be entitled to a secondary protection zone of 32.2 additional kilometers (20 additional miles). To the extent rights are obtained for any hyphenated market named in Section 76.51, such rights shall not exceed those permitted under Section 76.658(m) for each named community in that market.

5. Section 76.605 is amended to read as follows:

Section 76.605 Technical standards.

(a) * * *

(3) The visual signal level, across a terminating impedance which correctly matches the internal impedance of the cable system as viewed from the subscriber terminal, shall not be less than 1 millivolt across an internal impedance of 75 ohms (0 dBmV). Additionally, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, it shall not be less than 1.41 millivolts across an internal impedance of 75 ohms (+3 dBmV). (At other impedance values, the minimum visual signal level, as viewed from the subscriber terminal, shall be the square root of 0.0133(Z) millivolts and, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, shall be 2 times the square root of 0.00662(Z) millivolts, where Z is the appropriate impedance value.)

* * * * *

6. Section 76.609 is amended to read as follows:

Section 76.609 Measurements.

* * * * *

(h) * * *

(5) Measurements shall be made where other conductors are 3 or more meters (10 or more feet) away from the measuring antenna. * * *

* * * * *

7. The definition of theta in Section 76.611 paragraph (a)(1) is amended

to read as follows:

Section 76.611 Cable television basic signal leakage performance criteria.

(a) * * *

(1) * * *

[INSERT THETA SYMBOL HERE] is the fraction of the system cable length actually examined for leakage sources and is equal to the strand kilometers (strand miles) of plant tested divided by the total strand kilometers (strand miles) in the plant; * * *

* * * * *

PART 78--CABLE TELEVISION RELAY SERVICE

1. The authority citation for Part 78 continues to read as follows:

AUTHORITY: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 78.11 is amended to read as follows:

Section 78.11 Permissible service.

* * * * *

(e) * * * Provided, however, That prior Commission authority shall be obtained if the transmitting antenna to be installed will increase the height of any natural formation or manmade structure by more than 6.1 meters (20 feet) and will be in existence for a period of more than 2 consecutive days: * * *

* * * * *

3. Section 78.18 is amended to read as follows:

Section 78.18 Frequency assignments.

* * * * *

(i) * * *

(2) The transmission path is more than 16.1 km (10 miles) in length;

* * * * *

4. Section 78.19 is amended to read as follows:

Section 78.19 Interference.

* * * * *

(d) * * *

(1) * * *

(i) All stations within 2.4 km (1.5 statute miles);

(ii) Stations within 4.8 km (3 statute miles) with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 16 km (10 statute miles) with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iv) Stations within 80 km (50 statute miles) with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone.

* * * * *

5. Section 78.33 is amended to read as follows:

Section 78.33 Special temporary authority.

* * * * *

(c) * * *

(12) Description of antenna to be used, including height. In the event that the proposed antenna installations will increase the height of any natural formation, or existing manmade structure, by more than 6.1 meters (20 feet), a vertical plan sketch showing the height of the structures proposed to be erected, the height above ground of any existing structure, the elevation of the site above mean sea level, and the geographic coordinates of the proposed sites shall be submitted with the application.

* * * * *

PART 80--STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1088, as amended; 47 U.S.C. 154, 303.

2. Section 80.257 is amended to read as follows:

Section 80.257 Manufacturing requirements for radiotelegraph automatic alarm receiver (auto alarm).

* * * * *

(j) The auto alarm must be capable of operating when subjected to vibrations having a frequency between 20 and 30 Hertz and an amplitude of 0.76 mm (0.03 inch) in a direction at an angle of 30 to 45 degrees with the base of the auto alarm.

3. Section 80.261 is amended to read as follows:

Section 80.261 Technical requirements for automatic-alarm-signal keying device.

* * * * *

(l) The automatic-alarm-signal keying device must be capable of operating when subjected to vibrations having a frequency between 20 and 30 Hertz and an amplitude of 0.76 mm (0.03 inch) in a direction at an angle of 30 to 45 degrees with the base of the auto alarm.

4. Section 80.269 is amended to read as follows:

Section 80.269 Technical requirements for radio-telephone distress frequency watch receiver.

* * * * *

(b) * * *

(9) The receiver must be capable of operating when subjected to vibrations having a frequency between 20 and 30 Hertz and an amplitude of 0.76 mm (0.03 inch) in a direction at an angle of 30 to 45 degrees with the base of the auto alarm.

5. Footnote 3 in paragraph (c) of Section 80.371 is amended to read as follows:

Section 80.371 Public correspondence frequencies.

* * * * *

(c) * * *

3/ Within 120 km (75 miles) of the United States/Canada border, in the area of the Puget Sound and the Strait of Juan de Fuca and its approaches, the frequency 157.925 MHz is available for use by ship stations for public correspondence communications only. One hundred twenty kilometers (75 miles) from the United States/Canada border 157.425 MHz is available for intership and commercial communications. Outside the Puget Sound area and its approaches and the Great Lakes, 157.425 MHz is available for communications between commercial fishing vessels and associated aircraft while engaged in commercial fishing activities.

* * * * *

6. Paragraph (b), footnote 8 in paragraph (f), and paragraph (g) of Section 80.373 are amended to read as follows:

Section 80.373 Private communications frequencies.

* * * * *

(b) * * *

(6) * * * The geographic limitations to the frequencies 2738.0 kHz and 2830.0 kHz do not prohibit intership communication of less than 320 km (200 statute miles) when only one of the ship stations is within a permitted use geographic area.

* * * * *

(f) * * *

8/ Within 120 km (75 miles) of the United States/Canada border, in the area of the Puget Sound and the Strait of Juan de Fuca and its approaches, 157.425 MHz is half of the duplex pair designated as Channel 88. In this area, Channel 88 is available to ship stations for communications with public coast stations only. More than 120 km (75 miles) from the United States/Canada border in the area of the Puget Sound and the Strait of Juan de Fuca, its approaches, the Great Lakes, and the St. Lawrence Seaway, 157.425 MHz is available for intership and commercial communications. Outside Puget Sound area and its approaches and the Great Lakes, 157.425 MHz is also available for communications between commercial fishing vessels and associated aircraft while engaged in commercial fishing activities.

* * * * *

(g) On-board communications: This section describes the carrier frequency pairs assignable for on-board mobile radiotelephony communications. The center of the on-board repeater antenna must not be located more than 3 meters (10 feet) above the ship's working deck. These frequencies are available on a shared basis with stations in the Business Radio Service. * * *

* * * * *

7. Section 80.375 is amended to read as follows:

Section 80.375 Radiodetermination frequencies.

* * * * *

(c) * * *

(2) The station antenna height does not exceed 6 meters (20 feet) above sea level in a buoy station or 6 meters (20 feet) above the mast of the ship in

which it is installed.

* * * * *

8. Section 80.379 is amended to read as follows:

Section 80.379 Maritime frequencies assignable to aircraft stations.

* * * * *

(b) * * *

(5) * * *

(i) The altitude of aircraft stations does not exceed 300 meters (1,000 feet), except for reconnaissance aircraft participating in icebreaking operations where an altitude of 450 meters (1,500 feet) is allowed;

* * * * *

(7) Commercial fishing vessels and associated aircraft may use 157.425 MHz while engaged in commercial fishing activities except within 120 km (75 miles) of the United States/Canada border and Puget Sound and the Strait of Juan de Fuca and its approaches, the Great Lakes, and the St. Lawrence Seaway.

9. Section 80.759 is amended to read as follows:

Section 80.759 Average terrain elevation.

* * * * *

(b) Draw a circle of 16 km (10 statute mile) radius using the antenna site as the center. Divide each radial into 320 meter (0.2 statute mile) increments inside the circumference to the 3.2 km (2 statute mile) point.

(c) Calculate the height above sea level of each 320 meter (0.2 statute mile) division by interpolating the contour intervals of the map, and record the value.

* * * * *

10. Section 80.808 is amended to read as follows:

Section 80.808 Requirements of reserve installation.

(a) * * *

(8) The emergency electric lights must be controlled by two-way switches placed near the main entrance to the radiotelegraph operating room and at the radiotelegraph operating position, in all cases where the distance between these points is greater than 2.4 meters (8 feet). This requirement applies to stations which replace, or initially install the main or reserve radiotelegraph

transmitter on and after May 26, 1965.

* * * * *

11. Section 80.828 is amended to read as follows:

Section 80.828 Radiotelegraph station clock.

A working clock equipped with a sweep seconds hand and having a dial not less than 12.7 cm (5 in.) in diameter, the face of * * *

12. Section 80.829 is amended to read as follows:

Section 80.829 Survival craft nonportable radiotelegraph installation.

* * * * *

(f) When the lifeboat is afloat the installation must be capable of developing an antenna current such that the product of the maximum height of the antenna above the mean surface of the water, expressed in meters, and the r.m.s. antenna current on the frequency 500 kHz, expressed in amperes, is not less than 9.6.

13. Section 80.865 is amended to read as follows:

Section 80.865 Radiotelephone station clock.

A clock having a face of at least 12.7 cm (5 in.) in diameter must be mounted in a position that can be observed from the principal operating position.

14. Section 80.875 is amended to read as follows:

Section 80.875 VHF radiotelephone power supply.

* * * * *

(b) When the power supply for the VHF radiotelephone installation consists of batteries, they must be installed in the upper part of the ship, secured against shifting with motion of the ship, capable of operating the installation for 6 hours, and accessible with not less than 26 cm (10 in.) head room.

* * * * *

15. Section 80.915 is amended to read as follows:

Section 80.915 Main power supply.

* * * * *

(b) When the main power supply consists of batteries, they must be installed as high above the bilge as practicable, secured against shifting with

motion of the vessel, and accessible with not less than 26 cm (10 in.) head room.

* * * * *

16. Section 80.917 is amended to read as follows:

Section 80.917 Reserve power supply.

* * * * *

(c) When the reserve power supply consists of batteries, they must be installed as high above the bilge as practicable, secured against shifting with motion of the vessel, and accessible with not less than 26 cm (10 in.) head room.

* * * * *

17. Section 80.933 is amended to read as follows:

Section 80.933 General exemptions.

(a) Subject U.S. vessels less than 50 gross tons which are navigated not more than 300 meters (1,000 feet) from the nearest land at mean low tide are exempt from the provisions of Title III, Part III of the Communications Act.

* * * * *

18. Section 80.1001 is amended to read as follows:

Section 80.1001 Applicability.

* * * * *

(c) Every towing vessel of 7.8 meters (26 feet) or over in length, measured from end to end over the deck excluding sheer, while navigating; and

* * * * *

19. Section 80.1015 is amended to read as follows:

Section 80.1015 Power supply.

* * * * *

(b) When the power supply for a nonportable bridge-to-bridge radiotelephone installation consists of or includes batteries, they must be installed as high above the bilge as practicable, secured against shifting with motion of the vessel, and accessible with not less than 26 cm (10 in.) head room.

* * * * *

20. Section 80.1179 is amended to read as follows:

Section 80.1179 On-board repeater limitations.

* * * * *

(a) The on-board repeater antenna must be located no higher than 3 meters (10 feet) above the vessel's highest working deck.

* * * * *

21. Section 80.1181 is amended to read as follows:

Section 80.1181 Station identification.

(a) * * *

(1) The vessel is within 32 km (20 miles) of any coastline; or

* * * * *

PART 87--AVIATION SERVICES

1. The authority citation for Part 87 continues to read as follows:

AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 87.187 is amended to read as follows:

Section 87.187 Frequencies.

* * * * *

(l) * * *

(1) The altitude of aircraft stations must not exceed 300 meters (1,000 feet), except for reconnaissance aircraft participating in icebreaking operations where an altitude of 450 meters (1,500 feet) is allowed;

* * * * *

(z) The frequencies 121.950 MHz, 122.850 MHz and 127.050[1] MHz are authorized for air-to-air use for aircraft up to and including 3 km (10,000 ft) mean sea level in the vicinity of Grand Canyon National Park in Arizona within the area bounded by the following coordinates:

36-28-00 N. Lat;	112-47-00 W. Long.
36-28-00 N. Lat;	112-48-00 W. Long.
35-50-00 N. Lat;	112-48-00 W. Long.
35-43-00 N. Lat;	112-47-00 W. Long.

(aa) The frequency 120.650[1] MHz is authorized for air-to-air use for aircraft up to and including 3 km (10,000 ft) mean sea level within the area bounded by the following coordinates:

35-59-45 N. Lat;	114-51-45 W. Long.
36-09-30 N. Lat;	114-50-00 W. Long.
36-09-30 N. Lat;	114-02-55 W. Long.
35-54-45 N. Lat;	113-48-45 W. Long.
35-54-45 N. Lat;	114-41-45 W. Long.

[1] Until further notice this frequency is available for air-to-air use as described in the Grand Canyon vicinity. Availability is a result of the FAA's assignment of this frequency. If the FAA reassigns this frequency the Commission may require air-to-air use to cease.

3. Section 87.263 is amended to read as follows:

Section 87.263 Frequencies.

(a) * * *

(3) The frequencies 122.825 and 122.875 MHz are available for assignment to enroute stations which provide local area service to aircraft approaching or departing a particular airport. These frequencies will be assigned without regard to the restrictions contained in Section 87.261 (c) and (d). Only organizations operating aircraft with a maximum capacity of 56 passengers or 8,200 kg (18,000 lbs) cargo will be authorized use of these enroute frequencies.

* * * * *

4. Footnote 3 in paragraph (b) of Section 87.303 is amended to read as follows:

Section 87.303 Frequencies.

* * * * *

(b) * * *

3/ Mobile station operations on these frequencies are limited to an area within 320 km (200 mi) of an associated flight test land station.

* * * * *

5. Section 87.305 is amended to read as follows:

Section 87.305 Frequency coordination.

(a) * * *

(1) Each application for a new station license, renewal or modification of

an existing license concerning flight test frequencies, except as provided in paragraph (b) of this section, must be accompanied by a statement from a frequency advisory committee. The committee must comment on the frequencies requested or the proposed changes in the authorized station and the probable interference to existing stations. The committee must consider all stations operating on the frequencies requested or assigned within 320 km (200 mi) of the proposed area of operation and all prior coordinations and assignments on the proposed frequency(ies). * * *

* * * * *

PART 90--PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Secs. 4, 303, 307, 331, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307, 332; secs. 4(i) and 303(r), Communications Act of 1934, as amended, Secs. 0.131 and 0.331 of the Commission's Rules and 5 U.S.C. 553 (b)(3)(B) and (d)(3).

2. Section 90.7 is amended to read as follows:

Section 90.7 Definitions.

* * * * *

Average terrain. The average elevation of terrain between 3.2 and 16 km (2 and 10 miles) from the antenna site.

* * * * *

Conventional radio system. A method of operation in which one or more radio frequency channels are assigned to mobile and base stations but are not employed as a trunked group. An "urban-conventional system" is one whose transmitter site is located within 24 km (15 miles) of the geographic center of any of the first 50 urbanized areas (ranked by population) of the United States. A "sub-urban-conventional system" is one whose transmitter site is located more than 24 km (15 miles) from the geographic center of the first 50 urbanized areas. See Table 21, Rank of Urbanized Areas in the United States by Population, page 1-87, U.S. Census (1970); and Table 1 of paragraph (h) of Section 90.365.

* * * * *

3. Section 90.19 is amended to read as follows:

Section 90.19 Police Radio Service

* * * * *

(f) * * *

(7) The frequency 173.075 MHz is available for stolen vehicle recovery systems on a shared basis with the Federal Government. Stolen vehicle recovery systems are limited to recovering stolen vehicles and are not authorized for general purpose vehicle tracking or monitoring. Mobile transmitters operating on this frequency are limited to 2.5 watts power output and base transmitters are limited 300 watts ERP. F1D and F2D emissions may be used within a maximum authorized 20 kHz bandwidth. Transmissions from mobiles shall be limited to 200 milliseconds every 10 seconds, except that when a vehicle is being tracked actively, transmissions may be increased to 200 milliseconds every second. Transmissions from base stations will be limited to a total time of 1 second every minute. Applications for base stations operating on this frequency shall require coordination with the Federal Government. Applicants shall perform an analysis for each base station located within 169 km (105 miles) of a TV channel 7 transmitter of potential interference to TV channel 7 viewers. Such stations will be authorized if the applicant has limited the interference contour to fewer than 100 residences or if the applicant: (i) shows that the proposed site is the only suitable location; (ii) develops a plan to control any interference caused to TV reception from the operations; and (iii) agrees to make such adjustments in the TV receivers affected as may be necessary to eliminate interference caused by its operations. The licensee must eliminate any interference caused by its operation to TV channel 7 reception within 30 days of the time it is notified in writing by the Commission. If this interference is not removed within the 30-day period, operation of the base station must be discontinued. The licensee is expected to help resolve all complaints of interference.

* * * * *

4. Section 90.23 is amended to read as follows:

Section 90.23 Highway Maintenance Radio Service

* * * * *

(c) * * *

(14) This frequency may not be assigned within 161 km (100 miles) of New Orleans (coordinates 29-56-53 N and 90-04-10 W).

* * * * *

5. Section 90.65 is amended to read as follows:

Section 90.65 Petroleum Radio Service

* * * * *

(c) * * *

(37) This frequency is shared with the Special Industrial Radio Service and is available for assignment in the Petroleum Radio Service only in the states of Texas and Louisiana within 120 km (75 miles) of the Gulf of Mexico

and in adjacent offshore waters. Mobile relay stations will not be authorized.

(38) This frequency is shared with the Special Industrial Radio Service in the States of North Dakota; South Dakota; Iowa; Nebraska; Kansas and Missouri beyond 80 km (50 miles) from St. Louis and Kansas City; Colorado and Wyoming east of Longitude 106 degrees; and Minnesota south of Latitude 47 degrees.

(39) * * *

(40) This frequency may not be shared in the Special Industrial Radio Service within 32 km (20 miles) of the cities of Duluth, Minnesota; Des Moines and Davenport, Iowa; Omaha, Nebraska; Colorado Springs, Colorado; and Wichita, Kansas.

* * * * *

6. Section 90.67 is amended to read as follows:

Section 90.67 Forest Products Radio Service

* * * * *

(c) * * *

(28) This frequency is shared with the Taxicab Radio Service. It is available for assignment in this service only in the states of Washington, Oregon, Idaho, and Montana in areas at least 64 km (40 miles) from the center of urbanized areas of 200,000 or more population (U.S. Census of Population, 1970). The maximum output power is limited to 75 watts.

(29) * * *

(30) * * *

(31) This frequency is shared with the Special Industrial Radio Service in the States of North Dakota; South Dakota; Iowa; Nebraska; Kansas and Missouri beyond 80 km (50 miles) from St. Louis and Kansas City; Colorado and Wyoming east of Longitude 106 degrees; and Minnesota south of Latitude 47 degrees.

* * * * *

(33) This frequency may not be shared in the Special Industrial Radio Service within 32 km (20 miles) of the cities of Duluth, Minnesota; Des Moines and Davenport, Iowa; Omaha, Nebraska; Colorado Springs, Colorado; and Wichita, Kansas.

* * * * *

7. Section 90.73 is amended to read as follows:

Section 90.73 Special Industrial Radio Service

* * * * *

(d) * * *

(3) Operation on this frequency is limited to a maximum output of 2 watts; and each station authorized will be classified and licensed as a mobile station. Any units of such a station, however, may provide the operational functions of a base or fixed station, on a secondary basis to mobile service operations provided that the separation between the control point and the center of the radiating portion of the antenna of any units so used does not exceed 7.6 m (25 ft).

* * * * *

(29) This frequency is shared with the Petroleum Radio Service in the States of Texas and Louisiana within 120 km (75 miles) of the Gulf of Mexico and in adjacent offshore waters.

(30) This frequency is shared with other Industrial Radio Services and is available for assignment in the Special Industrial Radio Service only in the states of North Dakota, South Dakota, Iowa, Nebraska, Kansas, and Missouri beyond 80 km (50 miles) from St. Louis and Kansas City; Wyoming and Colorado east of Longitude 106 degrees except within a 80 km (50 mile) radius of Denver; and Minnesota south of Latitude 47 degrees except within a 80 km (50 mile) radius of St. Paul, Minnesota. The maximum transmitter output power may not exceed 110 watts.

* * * * *

(33) This frequency is not available for assignment in the Special Industrial Radio Service within 32 km (20 miles) of the cities of Duluth, Minnesota; Des Moines and Davenport, Iowa; Omaha, Nebraska; Colorado Springs, Colorado; and Wichita, Kansas.

* * * * *

8. Section 90.75 is amended to read as follows:

Section 90.75 Business Radio Service

* * * * *

(c) * * *

(3) This frequency will be assigned only to stations used in itinerant operations, except within 56 km (35 miles) of Detroit, Mich., where it may be assigned for either itinerant or permanent area operations (i.e., general use).

* * * * *

(27) Within the boundaries of urbanized areas of 200,000 or more population, defined in the United States Census of Population, 1960, vol. 1,

table 23, page 1-50, this frequency may be used only by persons rendering a central station commercial protection service within the service area of the radio station utilizing the frequency and may be used only for communications pertaining to safety of life and property, and for maintenance or testing of the protection facilities. Central Station commercial protection service is defined as an electrical protection and supervisory service rendered to the public from and by a central station accepted and certified by one or more of the recognized rating agencies, or the Underwriters Laboratories' (UL), or Factory Mutual System. Other stations in the Business Radio Service may be licensed on this frequency only when all base, mobile relay and control stations are located at least 120 km (75 miles) from the city center or centers of the specified urbanized areas of 200,000 or more population. With respect to combination urbanized areas containing more than one city, 120 km (75 mile) separation shall be maintained from each city center which is included in the urbanized area. The locations of centers of cities are determined from appendix, page 226, of the U.S. Commerce publication "Air Line Distance Between Cities in the United States."

* * * * *

9. Section 90.79 is amended to read as follows:

Section 90.79 Manufacturers Radio Service

* * * * *

(d) * * *

(21) This frequency is shared with the Special Industrial Radio Service in the States of North Dakota; South Dakota; Iowa; Nebraska; Kansas and Missouri beyond 80 km (50 miles) from St. Louis and Kansas City; Colorado and Wyoming east of Longitude 106 degrees; and Minnesota south of Latitude 47 degrees.

(22) This frequency may not be shared in the Special Industrial Radio Service within 32 km (20 miles) of the cities of Duluth, Minnesota; Des Moines and Davenport, Iowa; Omaha, Nebraska; Colorado Springs, Colorado; and Wichita, Kansas.

* * * * *

10. Section 90.81 is amended to read as follows:

Section 90.81 Telephone Maintenance Radio Service

* * * * *

(d) * * *

(4) This frequency is available on a shared basis in the Power, Petroleum, Forest Products, Manufacturers, and Telephone Maintenance Radio Services. It may be assigned only when all of the base and mobile frequencies in the 450-470 MHz band for which the applicant is primarily eligible are assigned

within 56 km (35 miles) of the proposed base station. Applications for this frequency must be coordinated with all five services. Telephone Maintenance Radio Service licensees on this frequency authorized prior to September 26, 1986, including their successors or assignees in business, will be permitted to renew their authorizations indefinitely, increase the number of transmitters operated, and expand the geographic coverage area of their systems, without a showing that all of the base and mobile Telephone Maintenance Radio Service frequencies in this band are assigned within 56 km (35 miles) of the existing base station.

* * * * *

11. Section 90.93 is amended to read as follows:

Section 90.93 Taxicab Radio Service

* * * * *

(c) * * *

(10) This frequency is shared by stations in the Forest Products Radio Service in the States of Washington, Oregon, Idaho, and Montana in areas at least 64 km (40 miles) removed from the center of urbanized areas of 200,000 or more population, 1970 Decennial Census. (Provided that, taxicab operations within the specified urbanized areas will not be authorized on frequencies shared with the Forest Products Radio Service until the unshared frequencies are fully utilized.) For two-frequency systems, separation between base and mobile transmit frequencies is 5 MHz; however, a mobile station may be assigned the frequency of an associated base station. (Such operation may, however, subject the single-frequency system to interference that would not occur to a two-frequency system.)

* * * * *

12. Section 90.103 is amended to read as follows:

Section 90.103 Radiolocation Service

* * * * *

(c) * * *

(26) Each frequency assignment in this band is on an exclusive basis within the primary service area to which assigned. The primary service area is the area where the signal intensities are adequate for radiolocation purposes from all stations in the radiolocation system of which the station in question is a part; that is, the primary service area of the station coincides with the primary service area of the system. The normal minimum geographical separation between stations of different licensees shall be at least 1931 km (1200 miles) when the stations are operated on the same frequency or on different frequencies separated by less than 1.0 kHz. Where geographical separation of less than 1931 km (1200 miles) is requested under these circumstances, it must

be shown that the desired separation will result in a protection ratio of at least 20 decibels throughout the primary service area of other stations.

(27) Notwithstanding the bandwidth limitations otherwise set forth in this section of the rules, wideband systems desiring to operate in this band may use such bandwidth as is necessary for proper operation of the system provided that the field strength does not exceed 120 microvolts per meter per square root Hertz (120 uv/m/$Hz^{1/2}$) at 1.6 km (1 mile). Such wideband operations shall be authorized on a secondary basis to stations operating within otherwise applicable technical standards. Applications for wideband systems in this band will be accepted beginning December 15, 1985.

* * * * *

13. Section 90.137 is amended to read as follows:

Section 90.137 Applications for operation at temporary locations.

(a) * * *

(2) The application must specify the general geographic area within which the operation will be confined. The area may be specified as a city, a county or counties, a state or states or other definable geographic area such as a specified radius around a particular city or known geographic site.

* * * * *

14. Section 90.159 is amended to read as follows:

Section 90.159 Temporary permit.

(a) An applicant for a private land mobile station license utilizing an already authorized facility may operate the radio station(s) for a period of up to 180 days under a temporary permit evidenced by a properly executed temporary license certificate (Form 572) after submitting or filing a formal application for station license in accordance with Section 90.127, provided that all the antennas employed by control stations are 6.1 m (20 ft) or less above ground or 6.1 m (20 ft) or less above a man-made structure other than an antenna tower to which it is affixed. When required by Section 90.175, applications must be accompanied by evidence of frequency coordination. The temporary operation of stations, other than mobile stations within the Canadian coordination zone is limited to stations with a maximum of 5 watts effective radiated power and a maximum antenna height of 6.1 meters (20 ft) above average terrain.

* * * * *

15. Section 90.175 is amended to read as follows:

Section 90.175 Frequency coordination requirements.

* * * * *

(a) For frequencies between 25 and 470 MHz. A statement from the applicable frequency coordinator recommending the most appropriate frequency. The coordinator's recommendation may appropriately include comments on technical factors such as power, antenna height and gain, terrain, and other factors which may serve to mitigate potential interference. Except for narrowband operations, the coordinator must not recommend any adjacent channel frequency 15 kHz removed to existing stations which would result in a separation of less than 16 km (10 miles), or 11 km (7 miles) in the Taxicab Radio Service. If the frequency recommended is in the 150-170 MHz band, and is 17.5 kHz or less removed from a frequency which is available to another radio service, the coordinator's statement must show that approval has been received from the coordinator for the other service. Coordination with another service is not required, however, for narrowband assignments more than 5 kHz removed from other narrowband assignments. Frequencies in the 450-470 MHz band, when used for secondary fixed operations, shall be assigned and coordinated pursuant to Section 90.261.

* * * * *

16. Section 90.239 is amended to read as follows:

Section 90.239 Interim provisions for operation of automatic vehicle monitoring (AVM) systems.

* * * * *

(c) * * *

(3) * * *

(ii) The minimum separation between a proposed AVM station and the nearest co-channel base station of another licensee operating a voice system is 120 km (75 miles) for a single frequency mode of operation or 56 km (35 miles) for a two-frequency mode of operation. Where the minimum distance separation cannot be achieved, agreement to the use of F1D, F2D, G1D, G2D or P0N emission must be received from all existing co-channel licensees using voice emissions within the applicable distance separation limits. If there is interference with voice operations and required agreement was not received, or operation was authorized on a secondary noninterference basis, the licensee of the AVM system is responsible for eliminating the interference.

* * * * *

17. Section 90.241 is amended to read as follows:

Section 90.241 Radio call box operations.

(a) * * *

(4) The antenna and its supporting structure must not exceed 6.1 m (20 ft) in height above the ground.

* * * * *

18. Section 90.250 is amended to read as follows:

Section 90.250 Meteor burst communications.

* * * * *

(d) Co-channel base stations of different licensees shall be located at least 241 km (150 miles) apart. A remote station and a base station of different licensees shall be located at least 241 km (150 miles) apart if the remote units of the different licensees operate on the same frequency. Waiver of this requirement may be granted if affected users agree to a cooperative sharing arrangement.

* * * * *

19. Section 90.271 is amended to read as follows:

Section 90.271 Narrowband operations.

(a) * * *

(1) Applications for narrowband operations must be accompanied by evidence of frequency coordination (Section 90.175). In the case of frequencies 7.5 kHz removed from FM channels the interference analysis should consider existing stations located within 96 km (60 miles).

* * * * *

20. Section 90.273 is amended to read as follows:

Section 90.273 Availability and use of frequencies in the 421-430 MHz band.

* * * * *

(c) Base or control stations shall be located within 48 km (30 miles) of the center of Buffalo or 80 km (50 miles) of the center of Detroit. In Cleveland, base or control stations will be allowed at locations north of line A that are within 48 km (30 miles) of the city center. In addition, low power (2 watts or less) base stations may locate within 80 km (50 miles) of the center of Buffalo. The following coordinates shall be used for the centers of these areas: * * *

(d) Mobile operation shall be confined to within 80 km (50 miles) of the centers of Detroit, Cleveland, or Buffalo.

21. Section 90.279 is amended to read as follows:

Section 90.279 Power limitations applicable to the 421-430 MHz band.

(a) Base station authorizations in the 421-430 MHz band will be subject to

Effective Radiated Power (ERP) and Effective Antenna Height (EAH) limitations as shown in the table below. ERP is defined as the product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction. EAH is calculated by subtracting the Assumed Average Terrain Elevation (AATE) as listed in Table 7 of Section 90.619 from the antenna height above mean sea level.

Limits of Effective Radiated Power (ERP) Corresponding to Effective Antenna Heights (EAH) of Base Stations in the 421-430 MHz Band

Effective antenna height (EAH) in meters (feet)	Maximum effective radiated power (ERP) (watts)
0-152 (0-500)	250
above 152-305 (above 500-1000)	150
above 305-457 (above 1000-1500)	75
above 457-610 (above 1500-2000)	40
above 610-762 (above 2000-2500)	20
above 762-914 (above 2500-3000)	15
above 914-1219 (above 3000-4000)	10
above 1219 (above 4000)	5

* * * * *

22. Section 90.307 is amended to read as follows:

Section 90.307 Protection criteria.

* * * * *

(d) The minimum distance between a land mobile base station which has associated mobile units and a protected adjacent channel television station is 145 km (90 miles).

* * * * *

23. Section 90.309 is amended to read as follows:

Section 90.309 Tables and figures.

(a) * * *

(2) Entering the proper table at the mileage figure found in paragraph (a)(1) of this section, find opposite, a selection of powers that may be used for antenna heights ranging from 15 m (50 ft) to 152.5 m (500 ft) (AAT). If

the exact antenna height proposed for the land mobile base station does not appear in the proper table, use the power figure beneath the next greater antenna height.

(3) The lowest power found using the tables mentioned in (a)(1) and (a)(2) of this section is the maximum power that may be employed by the proposed land mobile base station.

(4) In determining the average elevation of the terrain, the elevations between 3.2 km (2 mi) and 16 km (10 mi) from the antenna site are employed. Profile graphs shall be drawn for a minimum of eight radials beginning at the antenna site and extending 16 km (10 mi). The radials should be drawn starting with true north. At least one radial should be constructed in the direction of the nearest cochannel and adjacent channel UHF television stations. The profile graph for each radial shall be plotted by contour intervals of from 12.2 m (40 ft) to 30.5 m (100 ft) and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. For very rugged terrain 61 m (200 ft) to 122 m (400 ft) contour intervals may be used. Where the terrain is uniform or gently sloping, the smallest contour interval indicated on the topographic chart may be used. The average elevation of the 12.8 km (8-mile) distance between 3.2 km (2 mi) and 16 km (10 mi) from the antenna site should be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded by 50 percent of the distance) in sectors and averaging those values. In the preparation of the profile graphs, the elevation or contour intervals may be taken from U.S. Geological Survey Topographic Maps, U.S. Army Corps of Engineers Maps, or Tennessee Valley Authority Maps. Maps with a scale of 1:250,000 or larger (such as 1:24,000) shall be used. Digital Terrain Data Tapes, provided by the National Cartographic Institute, U.S. Geological Survey, may be utilized in lieu of maps, but the number of data points must be equal to or exceed that specified above. If such maps are not published for the area in question, the next best topographic information should be used.

(5) Applicants for base stations in the Miami, FL, urbanized area may, in lieu of calculating the height of average terrain, use 3 m (10 ft) as the average terrain height.

Table A--Base Station--Cochannel Frequencies (50 dB Protection)
Maximum Effective Radiated Power (ERP)<1>

Distance in kilometers (miles):<2>	Antenna height in meters (feet) (AAT)									
	15 (50)	30.5 (100)	45 (150)	61 (200)	76 (250)	91.5 (300)	106 (350)	122 (400)	137 (450)	152.5 (500)
260 (162)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
257 (160)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	800
249 (155)	1,000	1,000	1,000	1,000	1,000	875	775	700	625	575
241 (150)	1,000	1,000	950	775	725	625	550	500	450	400
233 (145)	850	750	650	575	500	440	400	350	320	300
225 (140)	600	575	475	400	350	300	275	250	230	225
217 (135)	450	400	335	300	255	240	200	185	165	150
209 (130)	350	300	245	200	185	160	145	125	120	100
201 (125)	225	200	170	150	125	110	100	90	80	75
193 (120)	175	150	125	105	90	80	70	60	55	50

<1>The effective radiated power (ERP) and antenna height above average terrain (AAT) shall not exceed the values given in this table.

<2>At this distance from transmitter site of protected UHF television station.

Table B--Base Station--Cochannel Frequencies (40 dB Protection)
Maximum Effective Radiation Power (ERP)<1>

Distance in kilometers (miles):<2>	Antenna height in meters (feet) (AAT)									
	15 (50)	30.5 (100)	45 (150)	61 (200)	76 (250)	91.5 (300)	106 (350)	122 (400)	137 (450)	152.5 (500)
209 (130)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
201 (125)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	850	750	725
193 (120)	1,000	1,000	1,000	1,000	900	750	675	600	550	500
185 (115)	1,000	1,000	800	725	600	525	475	425	375	350
177 (110)	850	700	600	500	425	375	325	300	275	225
169 (105)	600	475	400	325	275	250	225	200	175	150
161 (100)	400	325	275	225	175	150	140	125	110	100
153 (95)	275	225	175	125	110	95	80	70	60	50
145 (90)	175	125	100	75	50					

<1>The effective radiated power (ERP) and antenna height above average terrain (AAT) shall not exceed the values given in this table.

<2>At this distance from transmitter site of protected UHF television station.

Table C--Mobile and Control Station--Distance
Between Associated Base Station and Protected
Cochannel TV Station

[50 dB protection]

Effective radiated power (watts) of mobile unit and control station:	Distance	
	Kilometers	Miles
200	249	155
150	243	151
100	233	145
50	217	135
25	201	125
10	188	117
5	180	112

Table D--Mobile and Control Station--Distance Between Associated Land Mobile Base Station and Protected Cochannel TV Station

[40 dB protection]

Effective radiated power (watts) of mobile unit and control station:	Distance Kilometers	Distance Miles
200	209	130
150	201	125
100	193	120
50	185	115
25	177	110
10	169	105
5	161	100

Table E--Base Station Adjacent Channel Frequencies Maximum Effective Radiated Power (ERP)<1>

Distance in kilometers (miles):<2 3>	Antenna height in meters (feet) (AAT)									
	15 (50)	30.5 (100)	45 (150)	61 (200)	76 (250)	91.5 (300)	106 (350)	122 (400)	137 (450)	152.5 (500)
108 (67)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
106 (66)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	750
104 (65)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	825	650	600
103 (64)	1,000	1,000	1,000	1,000	1,000	1,000	775	625	500	400
101 (63)	1,000	1,000	1,000	1,000	1,000	650	450	325	325	225
99 (62)	1,000	1,000	1,000	1,000	525	375	250	200	150	125
98 (61)	1,000	1,000	700	450	250	200	125	100	75	50
96 (60)	1,000	1,000	425	225	125	100	75	50		

<1>The effective radiated power (ERP) and antenna height above average terrain (AAT) shall not exceed the values given in this table.

<2>At this distance from transmitter site of protected UHF television station.

<3>The minimum distance is 145 km (90 miles) where there are mobile units associated with the base station. See sec. 90.307(d).

* * * * *

24. Section 90.315 is amended to read as follows:

Section 90.315 Special provisions governing use of frequencies in the 476-494 MHz band (TV Channels 15, 16, and 17) in the Southern Louisiana-Texas Offshore Zone.

(a) The frequency bands from 490-491 and 493-494 MHz will be available for assignment to stations governed by this part within Zone A. The boundaries of Zone A are from longitude 87°45' on the east to longitude 94°00' on the west, and from the 3-mile limit along the Gulf of Mexico shoreline on the north to the limit of the Outer Continental Shelf on the south. The frequency bands from 484-485 and 476-488 MHz will be available for assignment to stations governed by this part within Zone B. The boundaries of Zone B are from longitude 87°45' on the east to longitude 95°00' on the west and from the 3-mile limit along the Gulf of Mexico shoreline on the north to the limit of the Outer Continental Shelf on the south. The frequency bands from 478-479 and 481-481 MHz will be available for assignment to stations governed by this part within Zone C. The boundaries of Zone C are from longitude 94°00' on the east, the 3-mile limit on the north and west, a 281 km (175 mile) radius from the reference point at Linares, N.L., Mexico on the southwest, latitude 26°00' on the south, and the limits of the Outer Continental Shelf on the southeast. These frequencies may also be assigned to fixed stations located on shore designed to provide communications service within the zone.

* * * * *

(d) * * *

Table 1--Protection of Cochannel Television Stations by Offshore Stations Operating in the Southern Louisiana-Texas Offshore Zone (65 dB Protection); Maximum Effective Radiated Power (in Watts)

Distance from transmitter to co-channel TV station kilometers (miles)	Antenna height above sea level meters (feet)		
	30.5 (100)	45 (150)	61 (200)
338 (210)	1,000	1,000	1,000
330 (205)	1,000	900	800
322 (200)	800	710	630
314 (195)	590	520	450
306 (190)	450	400	330
298 (185)	320	280	240
290 (180)	250	210	175
281 (175)	175	150	130
274 (170)	130	110	100
265 (165)	95	80	70
257 (160)	65	55	50
249 (155)	50	40	35
241 (150)	35	30	25

Note:-To determine the maximum permissible effective radiated power:

(1) As specified in Section 73.611 determine the distance between the proposed station and the cochannel television station. If the exact distance does not appear in Table 1 of this section, the next lower distance separation is to be used.

(2) Opposite this distance figure ERPs are given that may be used for antenna heights of 30.5, 45 or 61 meters (100, 150 or 200 ft) ASL. If the exact antenna height is not shown, the ERP allowed will be that shown for the next higher antenna height.

(e) * * *

Table 2.--Maximum Rearward Effective Radiated Power Allowed for Shore Stations; Rearward Effective Radiated Power (in Watts) From Shore Antenna in a Sector <+->22 1/2° From the Line Joining the Shore Antenna to the Cochannel Television Station

Distance from transmitter to cochannel television station: kilometers (miles)	Antenna height above ground in meters (feet)					
	30.5 (100)	45 (150)	61 (200)	91.5 (300)	152.5 (500)	228 (750)
298 (185)	320	280	240	190	125	90
290 (180)	250	210	175	125	100	60
281 (175)	175	150	130	100	70	50
274 (170)	130	110	100	75	40	35
265 (165)	95	82	70	50	35	25
257 (160)	65	55	50	40	25	20
249 (155)	50	40	35	30	20	15
241 (150)	35	30	25	20	15	10
233 (145)	25	20	18	15	10	7
225 (140)	18	15	13	10	7	5
217 (135)	13	10	9	7	5	3
209 (130)	10	8	6	5	3	2
201 (125)	7	6	5	4	3	2
193 (120)	5	4	3	3	2	1

Note: As an example of the use of Tables 1 and 2, assume an offshore station located 290 km (180 mi) from TV Channel 17 located in Bude, Miss. with an antenna height of 30.5 m (100 ft). Table 1 allows this station to operate with 250 W ERP. Now assume the shore station communicating with the offshore station is 48 km (30 mi) from the offshore station and 241 km (150 mi) from Bude, Miss. The shore station antenna height is 152.5 m (500 ft) above ground. The shore station will be allowed the same ERP as the offshore station (250 W) in the direction of the offshore station. Table 2 indicates that the effective radiated power in a sector <+->22 1/2° from the line joining the shore antenna to Bude, Miss. can only be 15 W. Consequently, a directional antenna must be used whose minimum front-to-back ratio over this 45° sector must be at least 12.2 dB. (250 W forward power to 15 W rearward power is a power ratio of 16.6 or 12.2 dB).

(f) To provide cochannel protection to television stations, no shore station will be allowed closer than 193 km (120 miles) from the cochannel television station.

(g) To provide adjacent channel protection to television stations, no shore or offshore station shall be allowed within an 128 km (80 mile) distance of the adjacent channel television station.

(h) Mobile stations shall not operate closer to shore than 6.4 km (4 miles) beyond the three mile limit and shall not operate with an ERP in excess of 100 watts with 9.1 m (30 ft) maximum antenna height.

(i) Mobile stations installed in aircraft shall operate 11 km (7 miles) beyond the three mile limit and shall not operate with an ERP in excess of 1 watt or at heights in excess of 305 m (1000 feet) AMSL.

* * * * *

25. Section 90.423 is amended to read as follows:

Section 90.423 Operation on board aircraft.

(a) * * *

(1) Operations are limited to aircraft that are regularly flown at altitudes below 1.6 km (1 mi) above the earth's surface;

* * * * *

(c) * * *

(1) Operations may be continued only for the balance of the term of such licenses if aircraft involved are regularly flown at altitudes greater than 1.6 km (1 mi) above the earth's surface.

(2) Operations may be continued for one additional renewal license term if the aircraft involved are regularly flown at altitudes below 1.6 km (1 mi) above the earth's surface.

* * * * *

26. Section 90.425 is amended to read as follows:

Section 90.425 Station identification.

* * * * *

(a) * * *

(4) * * *

(ii) In the Land Transportation Radio Services, licensees may request the Commission's local Engineer-in-Charge to approve the use of special mobile unit identifiers in lieu of the assigned call sign. Such requests, however, will not be granted where it appears that harmful interference to international operations may be caused by stations below 50 MHz, or by stations operating in areas within 80 km (50 miles) of an international boundary, or where it appears that the proposed method of identification will not adequately distinguish the mobile units of the applicant from the mobile units of other

licensees in the area.

* * * * *

27. Section 90.463 is amended to read as follows:

Section 90.463 Transmitter control points.

* * * * *

(f) In urban areas, the location of fixed transmitter control points will be specified, "same as transmitter," unless the control point is at a street address which is different from that of the transmitter(s) controlled. In rural areas, the location of fixed control points will be specified, "same as transmitter," unless the control point is more than 152.5 m (500 ft) from the transmitter(s) controlled. In the latter case, the approximate location of the control point will be specified in distance and direction from the transmitter(s) controlled in terms of distance and geographical quadrant, respectively. It would be assumed that the location of a fixed control point is the same as the location of the transmitter(s) controlled, unless the applicant includes a request for a different location described in appropriate terms as indicated herein.

* * * * *

28. Section 90.477 is amended to read as follows:

Section 90.477 Interconnected systems.

* * * * *

(d) * * *

(3) In the Special Emergency Radio Service (Subpart C of this part), except for medical emergency systems in the 450-470 MHz band, the Business and Special Industrial Radio Services (Subpart D of this part) and the Automobile Emergency and Taxicab Radio Services (Subpart E of this part), interconnection will be permitted only where the base station site or sites of proposed stations are located 120 km (75 miles) or more from the designated centers of the urbanized areas listed below. If licensees seek to interconnect in these five services within 120 km (75 miles) of the 25 cities they must obtain the consent of all co-channel licensees located both within 120 km (75 miles) of the center of the city; and within 120 km (75 miles) of the interconnected base station transmitter. The consensual agreements among the co-channel licensees must specifically state the terms agreed upon and a statement must be submitted to the Commission indicating that all co-channel licensees have consented to the use of interconnection. If a licensee has agreed to the use of interconnection on the channel, but later decides against the use of interconnection, the licensee may request that the co-channel licensees reconsider the use of interconnection. If the licensee is unable to reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new

licensee is assigned to a frequency where all the co-channel licensees have agreed to the use of interconnection and the new licensee does not agree, the new licensee may request that the co-channel licensees reconsider the use of interconnection. If the new licensee can not reach an agreement with co-channel licensees it may request that the Commission reassign it to another channel.

* * * * *

29. Section 90.483 is amended to read as follows:

Section 90.483 Permissible methods and requirements of interconnecting private and public systems of communications.

* * * * *

(b) * * *

(1) * * *

(ii) When a frequency is shared by more than one system, automatic monitoring equipment must be installed at the base station to prevent activation of the transmitter when signals of co-channel stations are present and activation would interfere with communications in progress. Licensees may operate without the monitoring equipment if they have obtained the consent of all co-channel licensees located within a 120 km (75 mile) radius of the interconnected base station transmitter. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new licensee does not agree, the new licensee may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission. Systems on frequencies above 800 MHz are exempt from this requirement.

(2) * * *

(i) When a frequency is shared by more than one system, automatic monitoring equipment must be installed at each base station to prevent its activation when signals of other co-channel stations are present and activation would interfere with communications in progress. Licensees may operate without this equipment if they have obtained the consent of all co-channel licensees located within a 120 km (75 mile) radius of the interconnected base station transmitter. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring

equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new licensee does not agree, the new licensee may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission. Systems above 800 MHz are exempt from this requirement.

(ii) Initial access from points within the public switched telephone network must be limited to transmission of a 3-second tone, after which time the transmitter shall close down. No additional signals may be transmitted until acknowledgement from a mobile station of the licensee is received. Licensees are exempt from this requirement if they have obtained the consent of all co-channel licensees located within a 120 km (75 mile) radius of the interconnected base station transmitter. However, licensees may choose to set their own time limitations. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new licensee does not agree, the new licensee may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission. Systems above 800 MHz are exempt from this requirement.

(c) In single frequency systems, equipment must be installed at the base station which will limit any single transmission from within the public switched telephone network to 30 seconds duration and which in turn will activate the base station receiver to monitor the frequency for a period of not less than three (3) seconds. The mobile station must be capable of terminating the communications during the three (3) seconds. Licensees are exempt from this requirement if they have obtained the consent of all co-channel licensees located within a 120 km (75 mile) radius of the interconnected base station transmitter. However, licensees may choose to set their own time limitations. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it another channel. If a new licensee is assigned to a frequency where

all the co-channel licensees have agreed that the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission.

(d) A timer must be installed at the base station transmitter which limits communications to three (3) minutes. After three (3) minutes, the system must close down, with all circuits between the base station and the public switch telephone network disconnected. This provision does not apply to systems licensed in the Police, Fire, Local Government, Special Emergency, Power, Petroleum, Railroad Radio Services, or above 800 MHz. All systems must be equipped with a timer that closes down the transmitter within three minutes of the last transmission. Licensees may operate without these requirements if they have obtained the consent of all co-channel licensees located within a 120 km (75 mile) radius of the interconnected base station transmitter. However, licensees may choose to set their own time limitations. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new licensee does not agree, the new licensee may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission.

30. Section 90.494 is amended to read as follows:

Section 90.494 One-way paging operations in the 929-930 MHz band.

* * * * *

(f) The effective radiated power and antenna height for base stations providing one-way paging service in the frequency band 929-930 MHz must not exceed 1 kilowatt (30 dBw) and 305 m (1000 ft) above average terrain (AAT), or the equivalent thereof determined from the following table:

Antenna height (AAT) meters (feet)	Effective radiated power (ERP) (watts)
Above 1,372 (4,500)	65
Above 1,220 (4,000) to 1,372 (4,500)	70
Above 1,067 (3,500) to 1,220 (4,000)	75
Above 915 (3,000) to 1,067 (3,500)	100
Above 763 (2,500) to 915 (3,000)	140
Above 610 (2,000) to 763 (2,500)	200
Above 458 (1,500) to 610 (2,000)	350
Above 305 (1,000) to 458 (1,500)	600

* * * * *

31. The "special limitations" column of the combined frequency list in Section 90.555 is amended for the frequencies 166.250 MHz and 170.150 MHz, only, to read as follows:

Section 90.555 Combined Frequency Listing

* * * * *

(b) * * *

166.250	PF	Available only within 241 km (150 mi) of New York City.

* * *

170.150	PF	Available only within 241 km (150 mi) of New York City

* * *

* * * * *

32. Section 90.609 is amended to read as follows:

Section 90.609 Special limitations on amendment of applications for assignment or transfer of authorizations for radio systems above 800 MHz.

* * * * *

(d) * * *

(4) Each application must include a signed statement listing any co-channel licensees (including call signs) located within 113 km (70 miles) of the primary site of the trunked system verifying that they all have agreed to the proposed trunked use (see Section 90.621(c)).

* * * * *

33. Section 90.615 is amended to read as follows:

Section 90.615 Frequencies available in the General Category.

* * * * *

(b) * * *

(2) * * *

(ii) Each application must include a written signed statement from each

co-channel licensee located within 113 km (70 miles) of the primary site of the trunked system verifying that each such licensee has agreed to the proposed trunked use (see Section 90.621(c)). The statement(s) should include each licensee's call sign.

* * * * *

34. Paragraph (d) and footnotes 2 and 3 to Table 4C of Section 90.617 are amended to read as follows:

Section 90.617 Frequencies in the 809.750-816/854.750-861 MHz, 821-824/866-869 MHz, and 896-901/935-940 MHz bands available for trunked or conventional system use in non-border areas.

* * * * *

(d) The channels listed in Table 4A and 4B are available only for eligibles in the SMR category which consists of Specialized Mobile Radio (SMR) stations and eligible end users. This paragraph deals with the assignment of frequencies only in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87 miles) from the U.S./Canada border. See Section 90.619 for the assignment of SMR frequencies in these border areas. For stations located within 113 km (70 miles) of Chicago, channels 401-600 will be assigned in groups as outlined in Table 4C.

* * *

Table 4C-SMR Category-Chicago Plan 2/,3/

* * *

2/ These frequencies will be authorized only in the area encompassed by a 113 km (70 mile) radius centered at 41°52'28" N. 87°38'22" W.

3/ All stations located beyond the 113 km (70 mile) distance authorized on or before August 16, 1982 to use these frequencies may continue to do so. Stations beyond the 113 km (70 mile) distance authorized after August 16, 1982, shall employ frequencies listed in Table 4A subject to the provisions of Section 90.621(b) or (c) as applicable.

35. Section 90.619 is amended to read as follows:

Section 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

* * * * *

(b) * * *

(6) Two Canadian television stations provide service in British Columbia in the band 806-890 MHz in accordance with U.S./Canadian Television Agreement of 1952. They are:

Enderby, B.C.	Channel 72	818-824 MHz.
Radium/Hot Springs, B.C	Channel 77	848-854 MHz.

Until reassignment of these stations, they must be protected as follows: the field strength of an interfering mobile radio signal at the station's calculated B contour (where the protected contour crosses the border, that portion of the border lying within the contour shall be treated as the relevant segment of the B contour) may not exceed 14 dBu for frequencies co-channel with the television channel utilized, and may not exceed 54 dBu in the two adjacent 6 MHz guard bands. The field strength of any interfering signal must be calculated using the FCC Report R-6602 F(50,10) propagation curves at a receiving effective antenna height of 9.1 m (30 ft).

* * * * *

36. Section 90.621 is amended to read as follows:

Section 90.621 Selection and assignment of frequencies.

* * * * *

(b) * * *

(2) * * *

(i) Required co-channel separations between common antenna sites are given by Table 1. A channel group assigned to a station on a site listed in the vertical column may not be re-assigned to a station on a site listed in the horizontal column if there is an "X" in the box created by the intersection of the vertical and horizontal lines. The geographic coordinates listed in the table represent an average for each particular site; all locations within 1.6 km (1 mi) of the coordinates will be considered to be at that site.

* * * * *

(c) Trunked systems authorized on frequencies in the Public Safety, Industrial/Land Transportation, Business and General Categories will be protected solely on the basis of predicted contours. Coordinators will attempt to provide a 40 dBu contour and to limit co-channel interference levels to 30 dBu over an applicant's requested service area. This would result in a distance separation of 113 km (70 miles) for typical system parameters. Applicants should be aware that in some areas, e.g., Seattle, Los Angeles, and northern California, separations greater than 113 km (70 miles) may be appropriate. Separations may be less than 113 km (70 miles) where the requested service areas, terrain or other factors warrant reduction. In the event that the separation is less than 113 km (70 miles), the coordinator must indicate that the protection criteria have been preserved or that the affected licensees have agreed in writing to the proposed system. Only co-channel interference between base station operations will be taken into consideration. Adjacent channel and other types of possible interference will not be taken into account.

* * * * *

37. Section 90.623 is amended to read as follows:

Section 90.623 Limitation on the number of frequencies assignable for conventional systems.

* * * * *

(c) No licensee will be authorized an additional frequency pair for a conventional system within 64 km (40 miles) of an existing conventional system, except where:

* * * * *

(d) No licensee will be authorized frequencies for a conventional system if that licensee is operating an unloaded trunked system or has an application pending for a trunked system to serve multiple subscribers within 64 km (40 miles) of the requested conventional system.

38. Section 90.627 is amended to read as follows:

Section 90.627 Limitation on the number of frequency pairs that may be assignable for trunked systems and on the number of trunked systems.

* * * * *

(b) No licensee will be authorized an additional trunked system within 64 km (40 miles) of an existing trunked system, except where:

* * * * *

39. Tables 2, 3, and 4 of Section 90.635 are amended to read as follows:

Section 90.635 Limitations on power and antenna height.

* * * * *

Table 2--Equivalent Power and Antenna Heights for Base Stations in the 851-869 MHz and 935-940 MHz Bands Which Have a Requirement for a 32 km (20 mi) Service Area Radius

Antenna height (AAT) meters (feet)	Effective radiated power (watts)<1 2 5> Urban/trunked	Suburban
Above 1,372 (4,500)	65	15
Above 1,220 (4,000) to 1,372 (4,500)	70	20
Above 1,067 (3,500) to 1,220 (4,000)	75	25
Above 915 (3,000) to 1,067 (3,500)	100	30
Above 763 (2,500) to 915 (3,000)	140	35
Above 610 (2,000) to 763 (2,500)	200	50
Above 458 (1,500) to 610 (2,000)	350	80
Above 305 (1,000) to 458 (1,500)	600	160
Above 152.5 (500) to 305 (1,000)	<3>1,000	220
Up to 152.5 (500)	1,000	<4>500

* * * * *

<3>Stations with antennas below 305 m (1,000 ft) (AAT) will be restricted to a maximum power of 1 kw (ERP).

<4>Stations with antenna below 152.5 m (500 ft) (AAT) will be restricted to a maximum power of 500 W (ERP).

* * * * *

Table 3--Equivalent Powers and Antenna Heights for Suburban-Conventional Base Stations in the 851-869 MHz and 935-940 MHz Bands Which Have a Requirement for Less Than 32.2 km (20 mi) Service Area Radius--Maximum Effective Radiated Power (Watts)

Base station antenna height (AAT) in meters (feet)

Above to	122 (400) 152.5 (500)	91.5 (300) 122 (400)	61 (200) 91.5 (300)	30.5 (100) 61 (200)	15 (50) 30.5 (100)	0 (0) 15 (50)
Service area radius km (mi):						
32 (20)	500	500	500	500	500	500
30 (19)	400	500	500	500	500	500
29 (18)	310	385	500	500	500	500
27 (17)	235	300	385	500	500	500
26 (16)	175	220	285	440	500	500
24 (15)	130	160	215	330	500	500
22 (14)	95	120	155	240	480	500
21 (13)	70	85	115	175	350	500
19 (12)	50	60	80	125	250	500
18 (11)	35	45	60	90	180	360
16 (10)	25	30	40	60	120	240
14 (9)	15	20	25	40	80	160
13 (8)	10	12	15	25	50	100
11 (7)	6	7	10	15	30	60
10 (6)	3	4	5	7	15	30
8 (5) or less	1	2	3	4	8	16

Table 4--Equivalent Powers and Antenna Heights for Urban-Conventional and Trunked System Base Stations in the 851-869 MHz and 935-940 MHz Bands Which Have a Requirement for Less than 32.2 km (20 mi) Service Area Radius--Maximum Effective Radiated Power (Watts)

	Base station antenna height (AAT) meters (feet)							
Above	228 (750)	152.5 (500)	122 (400)	91.5 (300)	61 (200)	30.5 (100)	15 (50)	0 (0)
to	305 (1,000)	228 (750)	152.5 (500)	122 (400)	91.5 (300)	61 (200)	30.5 (100)	15 (50)
Service area radius: km (mi):								
32 (20)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
30 (19)	800	1,000	1,000	1,000	1,000	1,000	1,000	1,002
29 (18)	640	830	1,000	1,000	1,000	1,000	1,000	1,000
27 (17)	480	625	960	1,000	1,000	1,000	1,000	1,000
26 (16)	360	470	720	900	1,000	1,000	1,000	1,000
24 (15)	270	350	540	675	875	1,000	1,000	1,000
22 (14)	200	260	400	500	650	1,000	1,000	1,000
21 (13)	140	180	280	350	450	700	1,000	1,000
19 (12)	100	130	200	250	325	500	1,000	1,006
18 (11)	70	90	140	175	230	350	700	1,000
16 (10)	45	60	90	110	145	220	440	1,000
14 (9)	30	40	60	75	100	150	300	600
13 (8)	20	25	40	50	65	100	200	400
11 (7)	15	20	30	40	50	80	160	300
10 (6)	8	10	16	20	25	40	80	100
8 (5) or less	5	6	9	12	15	25	50	100

40. Section 90.657 is amended to read as follows:

Section 90.657 Temporary permit.

An applicant for a Subpart S radio station license utilizing an already authorized facility may operate the radio station(s) for a period of up to 180 days under a temporary permit evidenced by a properly executed certification of FCC Form 572 after filing a formal application for station license, together with evidence of frequency coordination (when required), provided that the antenna(s) employed by the control station(s) is (are) 6.1 m (20 ft) or less above ground or 6.1 m (20 ft) or less above a man-made structure other than an antenna tower to which it is affixed.

41. Section 90.729 is amended to read as follows:

Section 90.729 Limitations on power and antenna height.

* * * * *

(c) Channels 196-200 are limited to 2 watts ERP and a maximum antenna height of 6.1 meters (20 ft) above ground.

* * * * *

PART 94--PRIVATE OPERATIONAL FIXED MICROWAVE SERVICE

1. The authority citation for Part 94 continues to read as follows:

AUTHORITY: Secs. 4, 301, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 301, 303, 307; secs. 4(i), 301, and 303(r), Federal Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r).

2. Section 94.3 is amended to read as follows:

Section 94.3 Definitions.

* * * * *

Long Haul System. A microwave system licensed under this part in which the longest radio circuit of tandem radio paths exceeds 402 km (250 miles).

* * * * *

Short Haul System. A microwave system licensed under this part in which the longest radio circuit of tandem radio paths does not exceed 402 km (250 miles).

* * * * *

3. Section 94.15 is amended to read as follows:

Section 94.15 Policy governing the assignment of frequencies.

* * * * *

(g) * * *

(1) An applicant may not apply for a frequency or frequency pair within a 40 km (25 mile) radius of any location for which it has concurrently applied;

(2) Further, no party may have an ownership interest, direct or indirect, in two or more pending applications proposing sites within 40 km (25 miles) of each other.

* * * * *

4. Section 94.63 is amended to read as follows:

Section 94.63 Interference protection criteria for operational fixed stations.

* * * * *

(d) * * *

(4) * * *

(i) For multiple address stations in the 928-929/952-960 MHz bands, a statement that the proposed system complies with the following co-channel separations from all existing stations and pending applications.

Fixed-to-fixed	145 km (90 miles)
Fixed-to-mobile	113 km (70 miles)
Mobile-to-mobile	80 km (50 miles)

Multiple address systems employing only remote stations will be treated as mobile for the purposes of determining the appropriate separation. For mobile operation, the distance is measured from the reference point specified on the license application.

* * * * *

5. Section 94.65 is amended to read as follows:

Section 94.65 Frequencies.

* * * * *

(a) * * *

(1) * * *

(v) Equivalent power and antenna heights for multiple address master stations:

Antenna height (AAT) in meters (feet)	Maximum effective radiated power	
	Watts	dBm
Above 305 (1,000)	200	53
Above 274 (900) to 305 (1,000) ...	250	54
Above 244 (800) to 274 (900)	315	55
Above 213 (700) to 244 (800)	400	56
Above 182 (600) to 213 (700)	500	57
Above 152.5 (500) to 182 (600) ...	630	58
152.5 (500) and below	1,000	60

For mobile operations the maximum ERP is 25 watts (44 dBm).

* * * * *

6. Section 94.90 is amended to read as follows:

Section 94.90 Special provisions for low power, limited coverage systems in the 12,200-12,700 MHz band.

* * * * *

(f) Radio systems authorized under the provisions of this section shall have no more than three hops in tandem but in any event, the maximum tandem length of the system should not exceed 40 km (25 miles).

* * * * *

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